Thammasat Review 2014, 17(2): 28-81

Disambiguation of the Text of Paragraph 2 of Section 68 of the Thai Constitution (2007): A Transformational Grammar Perspective

Somchit Burakorn
Department of English, School of Humanities and Tourism Management, Bangkok University
somchit.b@bu.ac.th

Abstract

Reading the statute of Paragraph 2 of Section 68 of the Thai Constitution (2007) reveals a controversy. The Thai Constitutional Court's interpretation of the law allows for the submission of a motion in one of two ways: (1) through the Prosecutor General or (2) directly to the Constitutional Court. Many lawyers and university law scholars have interpreted that the submission of a motion can be made only through the Prosecutor General. This study was conducted to find a plausible interpretation of the law using a linguistic approach. Participants in interpreting the statute included 104 university lecturers, and the interpretations of the lecturers fell into three groups. The first group interpreted that a motion can be submitted directly to the Constitutional Court by passing the Prosecutor General. The second group supported the idea that submitting a motion shall be made only through the Prosecutor General. The third group interpreted that submitting a motion can be made through either of the two channels. Diagrams have been integrated into the reading of the statute to attest to the various views.

Keywords: Constitution, constitutional court, prosecutor general, interpretation, tree diagram

Introduction

The ambiguity of the statute stated in Paragraph 2 of Section 68 of the English version of the Thai Constitution (2007) is a major issue that has led to diverse interpretations. This study embraced a linguistic approach to interpret a law that was written in a structurally ambiguous way. Accordingly, this study addressed the complex structure of the statute of Paragraph 2 to demonstrate the authority of the Constitutional Court and the function of the

Prosecutor General as assigned by the Constitution in relation to accepting a motion from "the *person* knowing of such act" as stated in Paragraph 2. The Constitutional Court's interpretation of the statute of Paragraph 2 (Bangkok Post, June 5, 2012; The Constitutional Court Ruling Number 18-22/2555 dated July 13, 2012)—that it can accept petitions directly from "the *person* knowing of such act"—has been the subject of criticism and debate by lawmakers as well as academics in the area of law. Such an interpretation has further aroused political movements, which have resulted in political instability and threatened political unrest in the nation. This interpretation has been further perceived as the Constitutional Court expanding its power beyond that which is written in Paragraph 2. The Constitutional Court has been criticized for interfering with the role of the Prosecutor General in accepting a motion. There have been very few studies, however, on this topic in Thailand and this study was carried out to remove this gap. It was designed to make a breakthrough using diagrams as aids to reading the statute, aiming to make explicit the relation between "the *person* knowing of such act" and the two legislative branches. The results of the study indicate that there are distinct links among the three parties. This linguistic methodology is so powerful in the sense that every part, and the connections among the parts, of the tree diagrams are clearly exhibited. Solid lines linking the parts to one another provide insight into the deep structure that constitutes the law as defined in Paragraph 2. This research, to some extent, should benefit legal drafters, lawyers, linguists, forensic linguists, academics in the area of law, and multilingual translators, providing them with an effective means to achieve a clear-cut interpretation of complex passages.

The problem statements of this research were:

- Whether or not lay people can directly submit a petition (motion) to the Constitutional Court as attested by linguistic methodology
- Whether or not a two-way submission of a motion is plausible as attested by linguistic methodology

The purpose of this research was to attest to the various interpretations of Paragraph 2 of Section 68 of the English version of the Thai Constitution (2007) using linguistic methodology. The use of linguistic methodology to analyze the structure of the statute allows justifying the validity of each interpretation. Diagrams were used to develop a clear and better understanding of the relationship among the variables in the statute of Paragraph 2.

This study had two objectives:

(1) to integrate diagrams into interpreting the law, describing the connections of the bodies concerning the submission of a motion; and

(2) to implement the text of Paragraph 2 with a reader's aid to accelerate the ease of the reading and to increase clarity.

Remarks:

The author started to conduct this constitutional research (collecting data) in mid 2012 when the constitutional was still enforced. However, the Thai Constitution 2007 was abolished on May 22, 2014 by the National Peace and Order Maintaining Council (NPOMC).

Literature Review

1. Original Thai Version of Paragraph 2 of Section 68 of the Thai Constitution (2007)

The topic of debate among scholars of law, academics, and the court alike is whether lay people are allowed to submit a petition directly to the Constitutional Court or not.

Below is the Thai version of Paragraph 2 of Section 68 of the Thai Constitution (2007) (underline added), which is the version at the center of the debate. (http://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/ewt_w3c/ewt_dl_link.php?nid=8337):

Paragraph 1 (intended for background information)

บุคคลจะใช้สิทธิและเสรีภาพตามรัฐธรรมนูญเพื่อล้มล้างการปกครองระบอบประชาธิปไตยอันมีพระมหากษัตริย์ทรงเป็นประมุขตามรัฐธรรมนูญนี้ หรือเพื่อให้ได้มาซึ่งอำนาจในการปกครองประเทศโดยวิธีการซึ่งมิได้เป็นไปตามวิถีทางที่บัญญัติไว้ในรัฐธรรมนูญนี้ มิได้

Below is the English translation of Paragraph 1 (http://library2.parliament.go.th/giventake/content_cons50/cons2550e-kd.pdf):

No one shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

Paragraph 2

ในกรณีที่บุคคลหรือพรรคการเมืองใดกระทำการตามวรรคหนึ่ง ผู้ทราบการกระทำดังกล่าวย่อมมีสิทธิ์เสนอเรื่องให้อัยการสูงสุดตรวจสอบข้อเท็จจริงและยื่นคำร้องขอให้ศาลรัฐธรรมนูญวินิจฉัยสั่งการให้เลิกการกระทำดังกล่าว แต่ทั้งนี้ ไม่กระทบกระเทือนการดำเนินคดีอาญาต่อผู้กระทำการดังกล่าว

However, the subject matter of debate lies in the underlined structure:

ผู้ทราบการกระทำดังกล่าวย่อมมีสิทธิ์เสนอเรื่องให้อัยการสูงสุดตรวจสอบ
ข้อเท็จจริงและยื่นคำร้องขอให้ศาลรัฐธรรมนูญ

The English translation of this part is as follows (Constitution Drafting Commission, Constituent Assembly, 2007):

Paragraph 2

The person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court.

The translation is literally accurate because the grammatical structures of Thai and English are similar; that is, both have a subject-verb-object (SVO) structure (Finegan 1999). The Thai-English translation of Paragraph 2 is as follows:

ผู้ทราบการกระทำดังกล่าว = The person knowing of such act

ย่อมมีสิทธิ์ = shall have the right

เสนอเรื่องให้ = to request

อัยการสูงสุด = the Prosecutor General

ตรวจสอบ = to investigate

ข้อเท็จจริง = its facts

และ = and

ยื่น = submit

คำร้อง = a motion

ขอให้ศาลรัฐธรรมนูญ = to the Constitutional Court.

There is a controversy concerning the verb "**ยื่น submit**." The candidate subjects of the verb "submit" can be "ผู้ทราบการกระทำดังกล่าว the person knowing of such act" or "อัยการสูงสุด the Prosecutor General." Moreover, the coordinating "และ and" is crucial in this statutory interpretation; that is, it seems to conjoin "*shall have the right…"* with "*submit a motion*..." Therefore, it is possible (for lay people) to interpret the statute in three ways:

(1) The person knowing of such act shall have the right to request the Prosecutor General to investigate its facts.

(2) The person knowing of such act shall have the right to submit a motion to the Constitutional Court.

(3) The Prosecutor General shall investigate its fact and (shall) submit a motion to the Constitutional Court

The controversy lies in who, by law, is permitted to submit a motion to the Constitutional Court. The statute is ambiguous in this respect. It seems that "the person knowing of such act" is allowed to submit a motion. What is the authority of the Prosecutor General assigned in Paragraph 2? Is a motion allowed to be submitted by the Prosecutor general if the investigation is sound? If so, it is implied that the statute allows the submission of a motion in two ways: (1) a submission through the Prosecutor General and (2) a direct submission by "the person knowing of such act" to the Constitutional Court.

2. The Nitirat Group Interpreting Paragraph 2 of Section 68, Thai version

Thai legal scholars, especially the Nitirat Group, have interpreted the Thai version of the statute of Paragraph 2 of Section 68 as follows (http://www.dailynews.co.th/politics/117982):

ผู้มีสิทธิยื่นคำร้องต่อศาลรัฐธรรมนูญ

รัฐธรรมนูญแห่งราชอาณาจักรไทย มาตรา 68 วรรคสอง กำหนดให้บุคคลมีสิทธิเสนอเรื่องให้อัยการสูงสุดตรวจสอบข้อเท็จจริงและยื่นคำร้องขอให้ศาลรัฐธรรมนูญวินิจฉัย หมายความว่า บุคคลต้องเสนอเรื่องให้อัยการสูงสุดก่อนภายหลังอัยการสูงสุดตรวจสอบข้อเท็จจริงแล้วเห็นว่าข้อเท็จจริงดังกล่าวมีมูล อัยการสูงสุดจึงยื่นคำร้องต่อศาลรัฐธรรมนูญ

According to the Nitirat Group, the submission of a motion to the Constitutional Court requires two steps. First, "the *person* knowing of such act" shall request the Prosecutor General to investigate its facts. Second, if the investigation is sound, the Prosecutor General shall submit a motion to the Constitutional Court. The academics emphasize that an ordinary

Thai citizen shall exercise his rights to protect the Thai Constitution and the democratic regime of government with the King as Head of the State only by requesting the Prosecutor General to investigate its facts as stated in the Thai version of Paragraph 2 of Section 68.

However, the Constitutional Court has not debated against this academic interpretation of the Thai version of Paragraph 2. On the other hand, a court member, Constitutional Court President, Wasan has resorted to the English version of the statute and interpreted that lay people are allowed to exercise their rights to protect the Thai constitution through two channels. Based on the English version, the Constitutional Court interprets that "the person knowing of such act" is allowed to submit a motion directly to the Constitutional Court or he/she is allowed to request the Prosecutor General to submit a motion on his/her behalf.

The controversy regarding the interpretation of this statute was the springboard for this research, which was carried out to attest to these various interpretations of Paragraph 2.

3. English Translation and Court's Claim of Its Authority to Accept Petitions Directly from Lay People

The current research addresses the English version of Paragraph 2 because it was deployed by the Constitutional Court as a way to accept petitions directly from ordinary people despite public criticism. The following is the English version of Paragraph 2 of Section 68 of the 2007 Constitution (Constitution Drafting Commission, Constituent Assembly 2007):

> [I]n the case where a person or a political party has committed the act under paragraph one, <u>the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court</u> for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person. In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party (underline added).

There has been widespread criticism of the Court regarding its authority, written in the charter, to accept petitions directly from lay people. Academics from the Nitirat Group of Thammasat University have criticized that the Constitutional Court acted outside its powers in accepting petitions to review amendments of the constitution. However, the Court defended its position by stating that the Constitutional Court had the authority to do so (see a quotation in *Matichon Online* below).

Having studied Paragraph 2 of Section 68, the Constitutional Court interpreted that the Court is lawful in accepting petitions directly from individuals, including the Prosecutor General.

Matichon Online (June 7, 2012) quoted Wasan, Constitutional Court President, as stating with respect to interpreting Paragraph 2 of Section 68, that the English translation should be examined. He indicated that the paragraph clearly specifies that the submission of a motion concerns the person who knows, not just the Prosecutor General (for the Thai version, see below):

เรื่องการตีความมาตรา 68 นั้น ขอให้ไปดูรัฐธรรมนูญฉบับที่แปลเป็น ภาษาอังกฤษ จะชัดเจนว่า การยื่นคำร้อง เป็นเรื่องของผู้ทราบ ไม่ใช่เรื่องของอัยการสูงสุด (อสส.) เพียงอย่างเดียว

4. Statutory Interpretation

4.1 The Main Sources of Meaning in Constitutional Interpretation

There are various sources from which judges draw meaning in interpreting the Constitution, including text, structure, and history (Kelso 1994):

Constitutional Text

Because the meaning of the Constitution is entrenched in the text, judges must read its words and phrases. The constitutional provision in question is the primary source of the legal meaning. As Solum (2008) noted,

> "…what does the Constitution mean? The United States Supreme Court has recently suggested that interpretations of the Constitutional text are guided by the principle that the Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning."

There is a rule that emphasizes the weight of statutory text in interpreting the Constitution called *the literal rule*. The rule states that if words or phrases of the statute are clear, "the court shall give effect to their literal meaning" (Sullivan n.d.).

Concerning the statutory text, there is a rule called *the golden rule* by which the court departs from the literal meaning. The rule states that when words or phrases of the statute are unclear or ambiguous which can make the law unjust, the court may depart from the literal meaning. The court may look for external aid available within the statute itself such the annexes, examples, diagrams or graphics to arrive at the acceptable meaning which provides justice.

There is also an interpretive rule known as *the mischief rule* which allows the court to remedy the statutory text when the constitutional text is found to yield great doubt as to the meaning.

The mischief rule (Rifa and Reza n.d.) "…is applied when judges encounter grave constitutional doubts. This rule attempts to determine the legislature's intent." "The application of the mischief rule (also called purposivism) gives judges more discretion than the literal or golden rule because it allows them to effectively decide on the legislature's intent. Because the rule gives judges more authority in deciding the law, it is argued that it undermines the Parliament's supremacy and is undemocratic because the rule allows judges to make law" (Scalia 2012).

Constitutional Structure

The Constitution provides an important democratic principle known as the separation of powers, namely the Parliament (Legislature), the Executive (Cabinet), and the Judiciary (Judge). A constitutional democracy establishes separation of powers with separation of roles (Tushnet *et al*. 2013):

- Parliament takes the role of-
  (1) making the law
  (2) amending the law
  (3) controlling executive functions
  (Power to make and change law is vested in the Parliament)

- Executive takes the role of-
  (1) governing the country
  (2) enforcing the law
  (Power to put law in action is vested in the Executive)

- Judiciary takes the role of-
  (1) ascertaining the law
  (2) interpreting the law
  (Power to make judgments is vested in the Judiciary)

No powers of the three branches should interfere in the functions of one another (ibid).

Regarding the doctrine of separation of powers established by the Constitution, Kelso (1994) noted the following,

"Arguments of constitutional structure raise two kinds of problems. First, a judge must decide to what extent any particular provision of the Constitution must be read (interpreted) against the backdrop of other related provisions of the Constitution… Any serious effort on the part of judges to discover the thoughts or reference behind the language of a statute must be based upon a painstaking endeavor to reconstruct the setting or context in which the statutory words were employed."

"A judge must ask whether the framers and ratifiers adopted a strict separation of powers approach with legislative, executive, and judicial powers strictly separate, or whether they adopted a constitution which focuses more on the sharing of powers and checks and balances."

Legislative History

One source of meaning in constitutional interpretation is the legislative history compiled by the Congress or Parliament. The legislative history includes (Kelso 1994) judicial precedents, notes of the Constitutional Convention, records of state ratifying conventions, thoughtful contemporaneous statements on constitutional provisions, and other typical sources of historical inquiry (newspaper accounts, statements of respected organizations, reliable evidence of public opinion generally, etc. Judges may consider legislative history as source of meaning in constitutional interpretation provided that it gives weight.

5. The Plain Meaning of Statute

5.1 The Advantages of the Plain Meaning Rule

The great advantages of the plain meaning rule (Sullivan n.d.) include the following:

- "It creates a zone of certainty. The public trusts in the justice provided by the law because if the text is plain, it means what is says and it is safe for the public to rely on it. Plain meaning deters the courts from interfering in construing text by importing their subjective views. When a law is certain, the public has fair notice. The effective law must have certainty and thus give fairness to everyone under the same law."
- "It supports formal equality. A rule whose meaning is plain expresses the same law for everyone and will be applied in the same way and to

the same effect to everyone. Plain meaning fosters equal opportunity for everyone."

5.2 Determining Plain Meaning

According to Sullivan (n.d.), plain meaning or ordinary meaning is

"…the meaning that spontaneously comes to mind upon reading words in their immediate context. The immediate context consists of an internal and external element. The internal element is the rest of the sentence in which words appear. The external element is the entire content of the interpreter's mind, including knowledge of language, shared knowledge of the world, and personal knowledge and experience. Accordingly, the interpreters must not pronounce on the meaning of a legislative text until the ordinary meaning has been tested against the entire context and the interpreters must not pronounce the text to be plain or ambiguous until the examination of the text is complete. On such an approach, the definition of the text is crucial. The narrower the definition, the more that is potentially excluded from consideration if, after taking into account the context, the meaning is said to be clear and the plain meaning rule is invoked."

According to the ordinary meaning rule, "the meaning that spontaneously comes to the mind of a competent reader upon reading the legislative text is *presumed* to be the meaning intended by Parliament. This meaning governs unless the evidence suggests some other meaning was intended" (ibid.).

6. Guides for Construction of Statutes

6.1. Function of the Court in Construing Statutes

Judicial review of statutes has been in the course of debate as to how far courts can go. However, the principle of judicial review has been established in accordance with the principle of separation of powers contained in the Constitution. The following are the limits of judicial power in reading a statutory text in question.

(a) In a statutory construction, "the primary function of the courts are simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted or to omit what has been inserted. The judges declare what the text and substance of the law is. That is, the courts interpret the law; they do not write the law. This flows from the constitutional principle of separation of

powers. The judicial branch may not exercise the lawmaking powers of the legislative branch" (Landau *et al.* 2009).

(b) The judge applies rules of construction of statute "only where the language is ambiguous. If the language use in the statute is plain and understandable, legislative intent must be gathered from it and there is no need to resort to rules of statutory construction" (http://famguardian.org/TaxFreedom/LegalRef/StatConstruction/OrLegCounsRulesOfStConst.pdf).

(c) The judge is to discern the intent of the legislature in interpreting a statute. "The best evidence of the legislature's intent is the text of the statute. In reading the text, the court uses relevant rules of construction, such as the rule that words of common usage typically should be given their ordinary meaning" (ibid).

(d) The judge first analyses the statutory text in its context to track the legislative intent. "If the intent of the legislature is not clear from the text and context of the statute, the court resorts to the legislative history of the statute. If the legislative intent remains unclear, the court studies general maxims of statutory construction for assistance in resolving the remaining uncertainty" (Landau *et al.* 2009).

7. A Linguistic Analysis of Paragraph 2 of Section 68, English version

The various interpretations of Paragraph 2 pertain specifically to the following:

> ...*the person knowing of such act shall have the right to request the Prosecutor*
> *General to investigate its facts and submit a motion to the Constitutional Court…*

English grammar holds that a clause or sentence is composed of two parts: a *subject* and a *predicate*.

The subject part of the statute of Paragraph 2 is "*the person knowing of such act,"* and the predicate part starts from "*shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court."*

The sentence can be bracketed as follows:

[*…the person knowing of such act*] [*shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court*.]

The sentence is clearly composed of a compound structure in the predicate part because it contains the conjunctive "*and*." According to the *Conjunctive/Disjunctive Canon* in 8.1 (see below), the statute requires someone to "submit" a motion to the Constitutional Court. This is why the conjunctive "*and"* is used. It is the coordinating "*and"* that introduces the verb "submit."

A critical point concerns the intrinsic properties of the coordinating "*and."* According to Roberts (1998), the conjunctive "*and"* can coordinate two phrases (called coordinate phrases) as a single unit, as in

(a) My breakfast is *bread and butter.* (Here, bread and butter is a set of menu items that cannot be divided.)

(b) Human beings *eat and drink.* (Here, eating and drinking is an arbitrary basic need of human beings that cannot be divided.)

Additionally, the coordinating "*and"* may conjoin two independent clauses (called coordinate clauses), as in

(c) Mark stumbled and fell. (Here, the sentence (c) can be broken into two independent clauses: Mark stumbled; Mark fell.)

Analogously, in the statute given, the verb phrases "*to investigate its facts"* and "*submit a motion to the Constitutional Court"* may be considered a single unit conjoined by the coordinating "*and*." It is required by law that the Prosecutor General assume two legal functions: first, he/she investigates the facts and then submits a motion to the Constitutional Court (if the investigation is sound). In short, the law assigns two arbitrary functions to the Prosecutor General.

However, one might feel inclined to assign the verb "submit" to the subject "the *person* knowing of such act." This inclination is an intuitive judgment because the coordinate principle states that only the constituents of the same syntactic category (same type) can be conjoined by a coordinator (Sobin 2011; Cowan 2008; Celce-Murcia and Larsen-Freeman 1999).

In the statute, the coordinating "*and"* conjoins the same type of verb phrase (VP):

(d) [*investigate it facts]* and [*submit a motion*]
VP VP

The grammatical analysis in (e) supports the idea that the Prosecutor General is the subject of the verb "investigate" and the verb "submit"—the two verbs are sisters of the same "mother."

The coordinate principle is violated if the conjunction "*and"* coordinates "shall have the right" with "submit a motion" because they hold different grammatical properties, with "*shall have the right*" being assigned an "auxiliary phrase (AUX)" and "submit a motion" being assigned a "verb phrase":

(e) [shall have the right] and [submit a motion]
AUX VP

The grammatical analysis in (e) supports the idea that "the person knowing of such act" functions only as the subject of the verb "shall have (AUX)," but does not function as the subject of the verb "submit" —the two verb phrases are not sisters and so they have or belong to different mothers.

A sentence embedded with coordinate clauses is sometimes ambiguous, and the statute of paragraph 2 is an ambiguous structure that has caused controversy among scholars. The ordinary grammatical description provided above may be unclear. This study attempted to make explicit every angle of interpretation made of the statute of Paragraph 2 using transformational-generative methodology, which has proved more scientific in structural analyses.

8. Three Theories of Statutory Interpretation

There are three dominant theories of statutory interpretation, as described in the following:

8.1. Textualism

This approach to interpreting looks to the text to find "a sort of objectified intent"—the intent that a reasonable person would gather from a legal text. Textualists believe that by adopting the "plain meaning" of a text, they can most effectively carry out, for example, the legislature's objectified intent. They contend that courts should seek to hear "the ring the words [of the statute] would have had to a skilled user of the words at the time, thinking about the same problem" (Jellum and Hricik 2009).

Textualism works on the intrinsic source, and the statute's words are the most important intrinsic source. Words play the most critical role in interpretation. Other intrinsic sources are syntax, punctuation, and grammar. Because words are

inherently ambiguous, judges have developed canons of statutory interpretation related to the text of the legislature. These textual canons help judges draw inferences from the words, syntax, grammar and structure of the statute (ibid).

Justice Scalia and Professor Garner promise that text-based statutory interpretation can be rendered more predictable and constraining if 57 "valid canons" are followed. The following are some of the 57 valid canons, so-called "canons of construction," in *Reading Law* (Scalia and Garner 2012):

- *Ordinary-Meaning Canon*:

  Words are to be understood in their ordinary, everyday meanings—unless the context indicates that they bear a technical sense.
- *Fixed-Meaning Canon*:

  Words must be given the meaning they had when the text was adopted.
- *Omitted-Case Canon:*

  Nothing is to be added to what the text states or reasonably implies (*casus omissus pro omisso habendus est*). That is, a matter not covered is to be treated as not covered.
- *Conjunctive/Disjunctive Canon:*

  And joins a conjunctive list, *or* a disjunctive list—but with negatives, plurals, and various specific wordings there are nuisances.

  Competent users of the language rarely hesitate over the meaning. A close look at the authoritative language of legal instruments, however—as well as the litigation that has arisen over them—shows that these little words can cause subtle interpretive problems.
- *Grammar Canon*:

  Words are to be given the meaning that proper grammar and usage would assign them.
- *Last-Antecedent Canon*:

  A pronouns, relative pronoun, or demonstrative adjective generally refers to the nearest reasonable antecedent.
- *Series-Qualifier Canon:*

  When there is straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series.

  Collectively, the last three canons—grammar canon, last-antecedent canon, series-qualifier canon—may be called "syntactic canons" because

they enable judges or readers to gain insight into the syntactic relationships of words (constituents) that make up a sentence or clause. The relationships among the internal parts of a clause can be explicitly observed through tree diagrams.

Scalia and Garner are textualists who wrote *Reading Law* in support of the idea of textualism. Beyond that, however, the book seeks to do something about the fact that "many judges who believe in fidelity to text lack the interpretive tools necessary to that end" (p. 7). The book is devoted to setting out the methods that the authors think should be used in interpreting legal texts (http://lawnlinguistics.com/2012/06/25/scalia-and-garner-on-statutory-interpretation-introduction-2/).

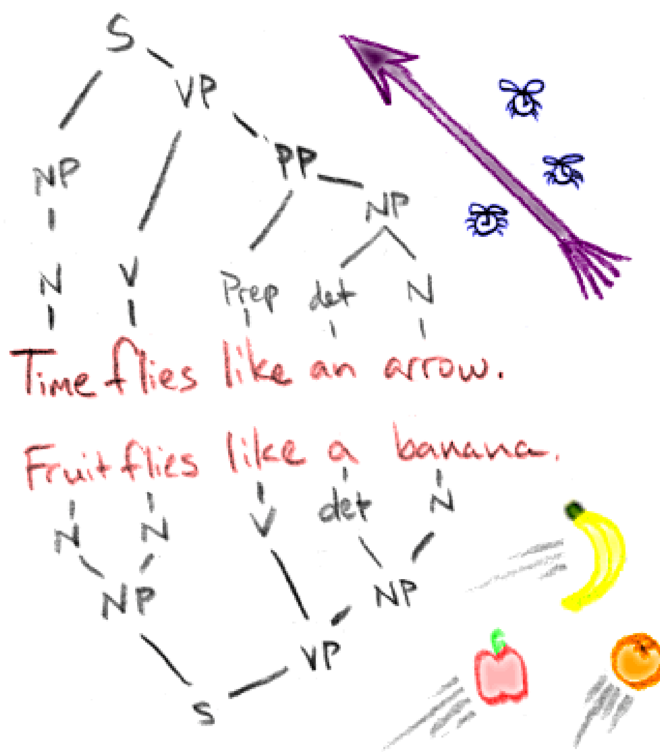
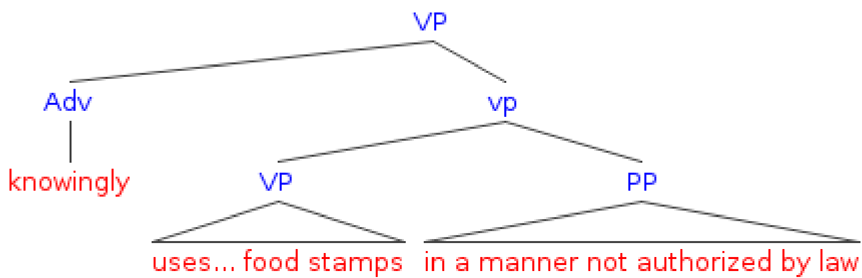
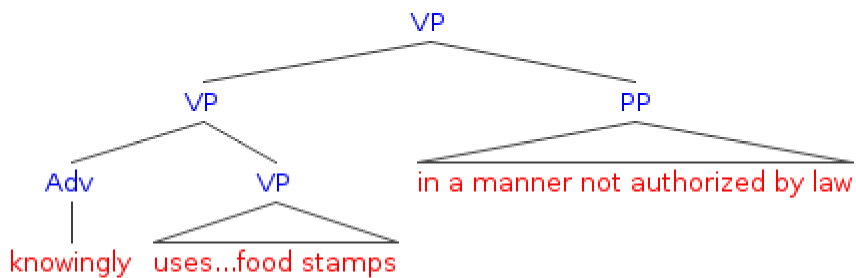


Figure 1: *Tree diagrams* display the meanings of the expression "Times flies like an arrow". (Source: Speculative Grammarian).



The defendant's interpretation



The government's interpretation

Figure 2: *Tree diagrams* display the possible syntactic relationships between the adverbial "knowingly" and the expression "uses…food stamps in a manner not authorized by law." The syntactic canons were applied to *Liparota* v. *United States* to describe the attachments of "knowingly" to the phrases that follow it. The defendant interpreted that "knowingly" applies to (modifies) both "uses…food stamps" and "in a manner not authorized by law," while the government interpreted that "knowingly applies to only "uses…food stamps." (Source*:* http://lawnlinguistics.com/2012/07/13/three-syntactic-canons/)

8.2. Intentionalism

"Intentionalism looks to the statutory language but also seeks to discern the meaning from legislature's intent. An intentionalist does not need a reason—such as ambiguity or absurdity—to consider sources beyond the text. Intentionalists attempt to discern intent by perusing all available sources, including principles, and legislative history" (Jellum and Hricik 2009).

Intentionalism believes that besides language, it is imperative to interpret the statute according to the intent of the author. It is required that extrinsic sources be consulted to find the true legislature's intent. Extrinsic materials are, for example,

dictionaries, text books, academic writings, law commission/committee reports, and case law from other jurisdictions.

Because intentionalist theory is so abstract and difficult to implement, it has attracted criticisms, as can be seen in the following (ibid. p. 48):

- "Are courts equipped to discern the legislature's intent?"
- "How could a court discern the intent of a group of individuals that may have had diversely different agendas?"
- "The idea that there is one unified legislative intent is arguably a fantasy because each individual legislator may have had a unique reason for voting for a bill."
- "The intent expressed anywhere other than in the enacted words is a fantasy."

There has been criticism against intentionalism. Critics have said that "not every legislator reads every committee report or hears floor debate. There are agreements and disagreements on a given issue during debates and if courts attribute to a statement made by one legislature, then another legislature would express their disagreement. If judges decide a case following intentionalism, they would create inefficiencies because a legislature's intent is not the entire body's intent" (Jellum and Hricik 2009:48).

Critics also argue that "any committee reports and other documents are drafted by staff members, not by the whole legislative body, so the intent belongs to the drafters, not to the individual legislators. Thus, reliance on these reports and documents is, arguably, unconstitutional. Even if the reports and documents were drafted by a legislator, reliance on these materials implicates constitutional concern because constitutions delegate legislative power to legislatures as a whole, not to committees or individual members" (ibid. p. 48). Critics believe that intentionalism creates a loophole which enables judges to manipulate legislative history to support their own interpretation.

Finally, critics argue that "it is unconstitutional to use legislative history to interpret a statute because the commission reports and documents are not required in a legislative process: they are not presented for legislative approval by a legislature" (ibid.).

8.3. Purposivism

Intentionalism and purposivism are synonymous. As such, the purposivism approach is similar to intentionalism in that both advocate searching extrinsic

materials beyond the text to discern the meaning of the statute in question. "Purposivists do not need a reason—like ambiguity, absurdity, or scrivener's error—to look to the extratextual sources to discern meaning. Instead, and like intentionalists, they believe that the interpretative function cannot be completed without considering other sources" (Jellum and Hricik 2009:50).

Advocates of purposivism argue that "courts should be allowed to seek meaning from the broadest number of sources to make more informed decisions. They support courts to consider *every single* relevant evidence bearing on the meaning of the language at issue. Purposivists believe that the more such evidence the court considers, the more likely it is that the court will arrive at a proper conclusion regarding the meaning" (ibid.)

However, there are several questions raised against purposivism:

- How can courts carry out all of the relevant evidence because courts are given a specific period of time as specified in the *interpretative act* in deciding a case? Courts have a limited time in ruling; they are not allowed to decide a case beyond the time indicated in the law.
- How can a legislative intent be gleaned from anything beyond the language adopted by the legislature?
- How can members of the public rely on the *competency* of the courts to *ascertain* the *purpose* of a statute?

Another concern is that "consultation of extrinsic, non-textual sources of interpretation in every case, regardless of whether the language of the statute is clear… subordinates the statutory text and renders the analysis more vulnerable to subjectivity" (ibid. p. 51).

9. Two Judicial Interpretative Models

Statutory interpretation is the prerogative of the courts, including tribunals and the courts alone. According to Lady Justice Mary Arden, a member of the Court of Appeal of England and Wales (Arden 2008), "it is important in a modern democracy that laws should be drafted in conformity with the rule of law." She emphasizes that "the rule of law may cease to exist if laws are not properly drafted."

According to Lady Justice Arden, judges approach the task of interpreting statutes in a variety of ways. There is no single technique which they use or a manual which they have. However, "there are a number of basic themes which she proposes (see 9.1 and 9.2).

9.1. Agency Modelss

According to Lady Justice Arden (ibid.) “the principles of statutory interpretation are not codified—they are given by common law and are therefore capable of endogenous development by the courts to meet new technical problems or social needs. Since the principles of statutory interpretation are not codified and are governed by common law, it might be thought that the statutes in question mean what the judges say they mean, rather than what Parliament would have intended. However, that is not theoretically so: in general, the court’s function is to ascertain the intention of Parliament and that is done using the language that Parliament has used. Thus, we can say that the basic model for statutory interpretation is the “agency model.” The essential features of this model is that the judge sets out to interpret what is written in front of him, rather than think about constitutional issues. In doing this he is fulfilling as faithfully as he can the will of the democratically elected Parliament.”

Lady Justice Arden noted that “judges cannot rewrite statutes. Moreover, they must act within judicial constraints. However, in practice, there are situations where it is not clear what Parliament would have intended. Parliament may have intended one thing but the language which it has used may not bear that meaning. The court has to find the meaning of the statute from the language used and the indications given in the statute read as a whole. This means that it is possible that its interpretation will turn out not to have been what Parliament intended. However, since the role of the courts is to interpret legislation, and not to rewrite it, the courts cannot fill a gap in the legislative scheme.”

9.2. Dynamic Model

According to Lady Justice Mary Arden (Arden 2008), the court may depart from acting as a faithful agency when a question arises as to whether the legislation has complied with human rights. “This imposes a specific mandatory obligation on the court to interpret legislation in conformity with the rights guaranteed by the European Convention on Human Rights. This approach is built on the presumption that domestic law (English law) must be interpreted in accordance with the international treaty obligation adopted by Parliament. The scheme of the human rights act was intended to preserve Parliament’s sovereignty in that regard.” Statutory interpretation that guards human rights is referred to as the “dynamic model.”

“Interpreting a statute in relation to the “dynamic model,” judges do not simply look at the wording and try to apply it—they look at the wording critically and

consider whether it complies with the human rights act. The approach works on the basis that Parliament intended that statutes should have the effect of operating in conformity with human rights; that is, the court is acting as the guardian of human and conventional rights. The court is to interpret legislation so that it is compatible with human rights. This is very far from being aimed at an interpretation of the legislation as a reflection of what Parliament must have intended" (ibid.).

10. The Injustice of Dynamic Statutory Interpretation

What the statutes say binds everyone. The law directs and controls people's behaviors. When courts are attracted to dynamic statutory interpretation, the people affected by the law expressed concerns in the form of questions such as the following (D'Amato 2010:2):

- How can we possibly plan our lives on the basis of the law of tomorrow when we can't predict what that law will be?
- Are courts that are attracted to the "dynamic model" teaching us that we no longer know and no longer rely on the rule of law in our daily lives because months or years later they can use policy considerations to make new law and apply that law retroactively to us?
- Hasn't justice become impossible to get from courts if judges insist on upsetting both sides' expectations of what the law was when their case or controversy arose, and instead pull the rug out from under their feet with new law based on the judges' own ideas of general social and governmental policy?
- Isn't this just a case of judges appropriating the rights of the parties, without compensation, in order to announce new social legislation?
- Isn't this the very definition of injustice?
- Did the court's decision advance congressional policy?

According to D'Amato, the public law theory of "dynamic statutory interpretation" is worse than misguided—it is unjust. Not supporting the "dynamic model," Eskridge (1987) accepts the traditional assumptions that a functional representative democracy in our polity holds "that the legislature is the primary lawmaking body (Parliament), and that in many cases statutory language will be sufficiently determinate to resolve a given case." The theory of "dynamic statutory interpretation" may apply only when the statute is very old and generally phrased and the societal or legal context of the statute has changed in material ways (ibid).

11. Statutory Interpretation: Golden Rule vs. Absurdity Rule

The "golden rule" of statutory interpretation states that courts adhere to the grammatical and ordinary sense of words, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument. Lord Wensleydale in *Grey v. Pearson* (1857) expressed the following (Klinck 2007:57):

> "…in construing wills and indeed statutes, and all written instruments, **the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency** (bold in original)."

An assumption of the "golden rule" is that some interpretations are unreasonable or unjust.

An "absurd" interpretation means, in principle, an interpretation which leads to "distinctions that are arbitrary and irrational," leading to a "strange result" which would shock "common sense."

The "absurdity rule" states that "courts reject certain outcomes as unacceptable. It is a well-established principle of statutory interpretation that the legislature does not intend to produce an absurd consequence. This rule allows a court to avoid the literal meaning of a statute in order to avoid a bizarre result."

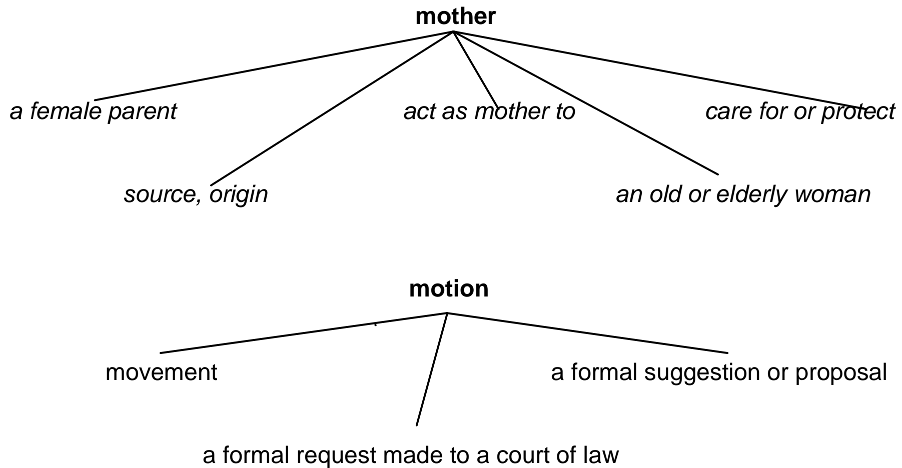
To cite examples of an absurd literal meaning (Farber 1995), in Scotland, a law says that *it is apparently permissible to cite the work of academics, but only if they are dead*. A leading French case involves a statute that, if read literally, *would have prohibited passengers from getting on or off a train except when it was moving.*

12. Language Ambiguity

Linguistically, something is ambiguous when it can be interpreted or understood in two or more senses or ways. There are two levels of ambiguity: lexical and sentential.

12.1. Lexical Ambiguity

A single word is ambiguous if it can be understood in more than one way. This is called *lexical ambiguity*. Given below are ambiguous words with possible meanings expressed in tree diagrams (Perrault 2008):



Using a single word having such a quality can make a text difficult to understand and interpret. The form of the lexicon used in language in legislation should hold as narrow a meaning as possible, and if used, the terms should be defined.

12.2. Structural Ambiguity

A sentence or clause expresses structural ambiguity when it can be parsed into more than one sentence or clause, rendering more than one meaning (Malmkjaer 2002).

A sentence is considered ambiguous when questions such as the following arise:

(1) Who is the subject of the nonfinite verbs such as infinitives, participles, and gerunds?
(2) An adverbial phrase can be interpreted to modify more than one head noun.
(3) A relative clause can be interpreted to modify more than one head noun.

As for case (1), examples are:

(1) a. The chicken is ready *to eat*. (Who or what eats?)
The chicken is ready for us to eat. (Clear)
b. I saw him *jogging* with a friend. (Who was jogging, I or he?)
I saw him while I was jogging. (Clear)
c. Tony enjoys *painting* his models nude. (Who is nude?)

Tony enjoys painting his models while they are nude. (Clear)

d. *Visiting* relatives can be boring. (Who is doing the visiting?) My relatives visiting next week can be boring. (Clear)

As for case (2), examples are:

(2) a. John hit the man with a telescope. (Whose telescope?) John hit the man by using a telescope. (Clear) John hit the man who had a telescope. (Clear)

b. I shot an elephant in pajamas. (Who was wearing pajamas?) I shot an elephant while I was in pajamas. (Clear)

c. Dad sold a car for me. (Whose car, Dad's or mine?) Dad sold his car for me. (Clear)

As for case (3), examples are:

(3) a. Someone shot the servant of the actress who was on the balcony. (Who was on the balcony, the servant or the actress?) Someone shot the actress's servant who was on the balcony. (Clear)

b. Several parents with their children came in who were wearing hats. (Who were wearing hats, the parents or children or both?) Several parents who were wearing hats came in with their children. (Clear)

Structural ambiguity emerges when some required parts of a sentence are dropped or eclipsed as in (1) and (2). The discontinuous constituent structure causes problems in interpreting the sentences in (3). Writers should be aware of these problems when creating a sentence that contains multiples concepts or ideas.

12.3. Legislative Drafting: a Judicial Perspective

According to Lady Justice Mary Arden (2008:13), there is the tendency of some drafters to pack many ideas and concepts into one single clause:

"This can lead to great loss of clarity. It is sometimes not clear, for instance, whether conditions that are stated as to be necessary are in fact necessary and exclusive or only necessary but not exclusive. To take an example, a statute may provide that before A can happen, B is necessary and that B is not necessary unless either C or D is present. Can the court say that even if C or D is present, the condition that B is necessary is not satisfied because the further provision that B is not necessary unless C or D is present is a threshold condition and not an exhaustive statement of what necessary is? In these situations, logical purity has been given greater priority than transparency and clarity. If judges find this sort of clause difficult, one must think what the position is for members of the public or lawyers in the profession. Of course, some statutes have to be addressed to a specialist audience. However, they can still be clearly expressed in regard to matters that were clearly anticipated."

Lady Justice Mary Arden commented that "the greatest merit in legislation is its ability to withstand logical analysis. If it cannot withstand this kind of rational analysis, the courts will have great difficulty in interpreting" the statutes in question (ibid.)

Justice Arden recommended that "legislative drafters include explanatory notes in general. They can provide an overview and explanation outside the statute. In general, statutes should contain only operative material. It is an important tool of statutory interpretation that each word should be given meaning and this may not be possible if mere narrative is included". She would be happy "to see some narrative in legislation provided that it is clear that it is simply an aid to interpretation. In a suitable context, it can be useful to give examples in a statute" (ibid).

13. Graphics and other Innovations in Legislative Drafting

When words aren't enough, graphics and other innovations are introduced to improve legislative drafting (Penfold, 2001). The introduction of such devices comes from recent or current Australian legislation. "Graphics are not simply experimental but are actually part of Australian law. The alternative versions of some of the graphics are not included in legislation—rather, they have been annexed to demonstrate particular points." Using graphics to illustrate law has been accepted worldwide, including Australasia (Australia and New Zealand), the United Kingdom, Ireland, South Africa, Hong Kong and the states members of the European Union.

The following diagram shows the basic elements of a legal act. Depending on the complexity of the text, elements such as parts, titles, chapters, sections, tables, graphics (diagrams) and figures may be used in the preamble, enacting terms and annexes.

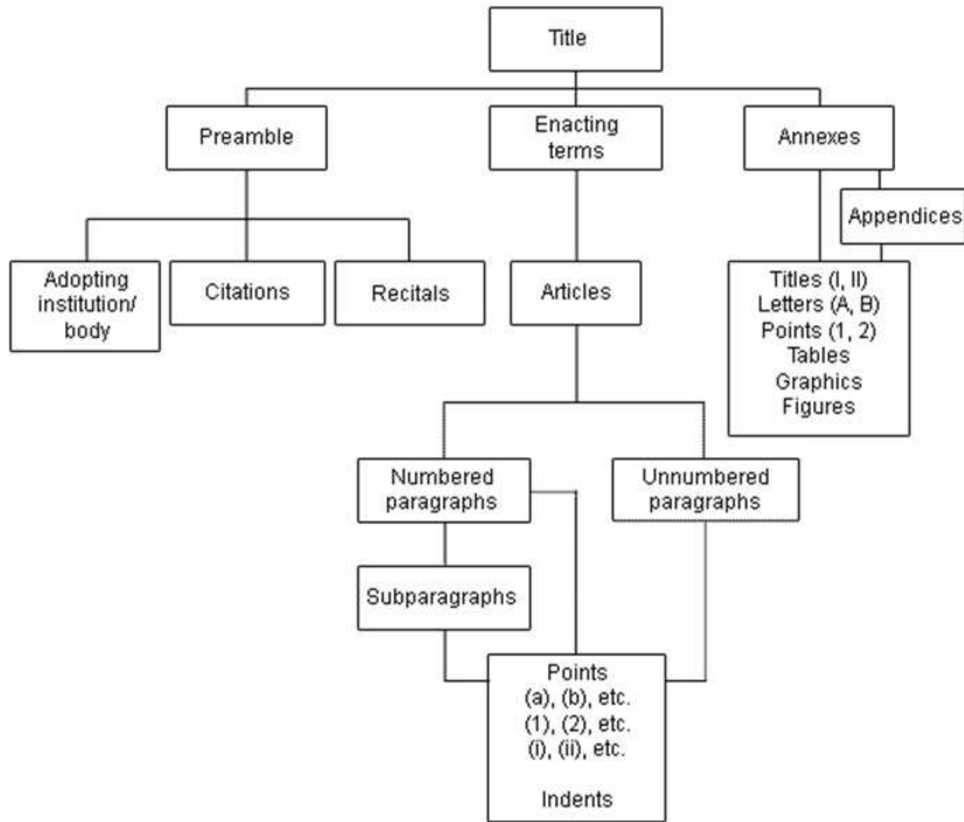


Figure 3: Diagram shows the basic elements or structure of a legal act. Graphics, tables and figures may be used in the annexes as part of the law.
(Source: http://publications.europa.eu/code/en/en-120000.htm)

Materials and Methodology

This study embraced knowledge of linguistics, mainly the knowledge of syntax with respect to the English language. It aimed at attesting to various interpretations of the statute of Paragraph 2 which contains an embedded clause with the coordinating "*and"* that confuses the readers of the text.

1. Participants

A total of 104 English professionals teaching at state universities, one institute of higher education and two private universities in Bangkok, Thailand participated in interpreting the English version of the statute of Paragraph 2 of Section 68. The collection of data covered the period June 29 to October 30, 2012.

2. Material: Paragraph 2 of Section 68 of the Thai Constitution (2007)

The English version of Section 68 Paragraph 2 of the Thai Constitution (2007) was obtained online (Constitution Drafting Commission, Constituent Assembly 2007).

3. Questionnaire Provided

A mixed questionnaire, close and open-ended, was designed to survey participants about the pertinent part of Paragraph 2, and university lecturers were requested to study the text of Paragraph 2. Problematic items (two possible *subjects* and *a verb*) in the statute were highlighted and framed so that participants could easily identify and distinguish them from the rest.

Below is the statute in question presented to English professionals to study and interpret. Participants were asked to use a line to link the possible subject to the verb "submit."

Paragraph 2 of Section 68 contains two noun phrases that can be interpreted as the subject of the verb "submit": "the *person* knowing of such act," and the *Prostitutor General*:

….the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**….

It is evident that the English sentence structure used to write the statute is a complex one. Paragraph 2 of Section 68 has two noun phrases as subject candidates—the *person* and the *Prosecutor General*—for the verb "submit." Furthermore, the coordinator "and" is employed to conjoin infinitive clauses, which makes the statute difficult to interpret.

Hypothesis

Because the text of Paragraph 2 is composed of a compound sentence that contains an embedded non-finite clause (...*the Prosecutor General to investigate its facts* **and** *submit a motion to the Constitutional Court*…), it can be hypothesized that the syntactic structure is ambiguous and, as a result, the interpretation will not be unanimous.

4. Phrase Structure Rules

Linguistically, a complex structure can be made explicit through the use of phrase structure (PS) rules, and it is evident that the written structure of the statute of Paragraph 2 is a complex one. Therefore, it is important that phrase structure rules be employed as a tool to justify the functions of the Constitutional Court and the authority of the Prosecutor General. By using phrase structure rules, a tree diagram can be created. The connections between elements in the tree diagram are explicitly denoted by solid lines.

The following are the selected PS rules relevant to analyzing a complex structure such as the structure of Paragraph 2 of Section 68 (Celce-Murcia *et al.* 1999):

(1) S ---> SUBJ PRED

[*S* stands for any constructions that contain a "subject" and "predicate."]

(2) PRED ---> AUX VP Advl

$$\text{(3) AUX ---> } \left\{ \begin{array}{l} \text{T} \\ \text{M (perf) (prog) (pass)} \\ \textit{to} \\ \text{-}\textit{ing} \\ \text{-imper} \end{array} \right\}$$

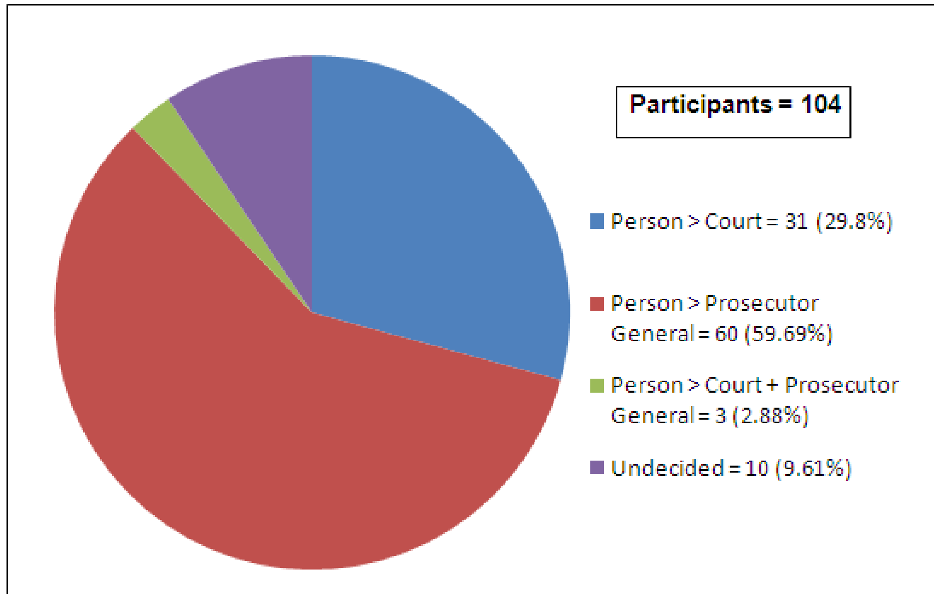
$$\text{(4) VP ---> } \left\{ \begin{array}{l} \text{Cop} \left\{ \begin{array}{l} \text{NP} \\ \text{AP} \\ \text{PrepP} \end{array} \right\} \\ \\ \text{V} \left\{ \begin{array}{ll} \text{(NP)} & \text{(PrepP)} \\ \text{(NP)} & \text{S} \end{array} \right\} \end{array} \right\}$$

$$\text{(5) NP ---> } \left\{ \begin{array}{l} \text{Pro} \\ \text{S} \\ \text{PRO} \end{array} \right\}$$

In rule (5), "pro" refers to *pronoun* (he, she, it, they) while "PRO" in uppercase refers to "PRO-form," and is representative of the agent mentioned, which resides at a higher level within the clause or sentence.

Results and Discussion

The interpretations of Paragraph 2 by 104 lecturers of English vary as shown in the graph below.



Clearly, the statute of Paragraph 2 is ambiguous. The graph indicates that interpretations fall into 3 categories, excluding the undecided category.

1. Interpretation 1:

The arrow linked to the verb "**submit"** shows the interpretation of the body that is allowed to submit a motion.

….the **person** knowing of such act shall have the right to request the **Prosecutor General** to investigate its facts and **submit** a motion to the **Constitutional Court**….

There were 31 participants who linked the verb "**submit"** to the subject "the *person* knowing of such act." Interpretation 1 supports the notion that the "*person"* knowing of such act has the right to submit a motion (directly) to the *Constitutional Court*. Interpretation 1 accounts for 29.80% of the 104 participants.

Linguistic Approach to Interpretation

Interpretation 1 may be parsed and transformed into a tree diagram to derive the underlying (deep) structure of the sentence. This method enables us to visualize the relationship between the three bodies in question: the person, the Prosecutor General, and the Constitutional Court.

Parsing

Interpretation 1 may be parsed as follows:

The *person* knowing of such act shall have the right to request the Prosecutor General to investigate its facts *and* the *person* knowing of such act shall have the right to submit a motion to the Constitutional Court.

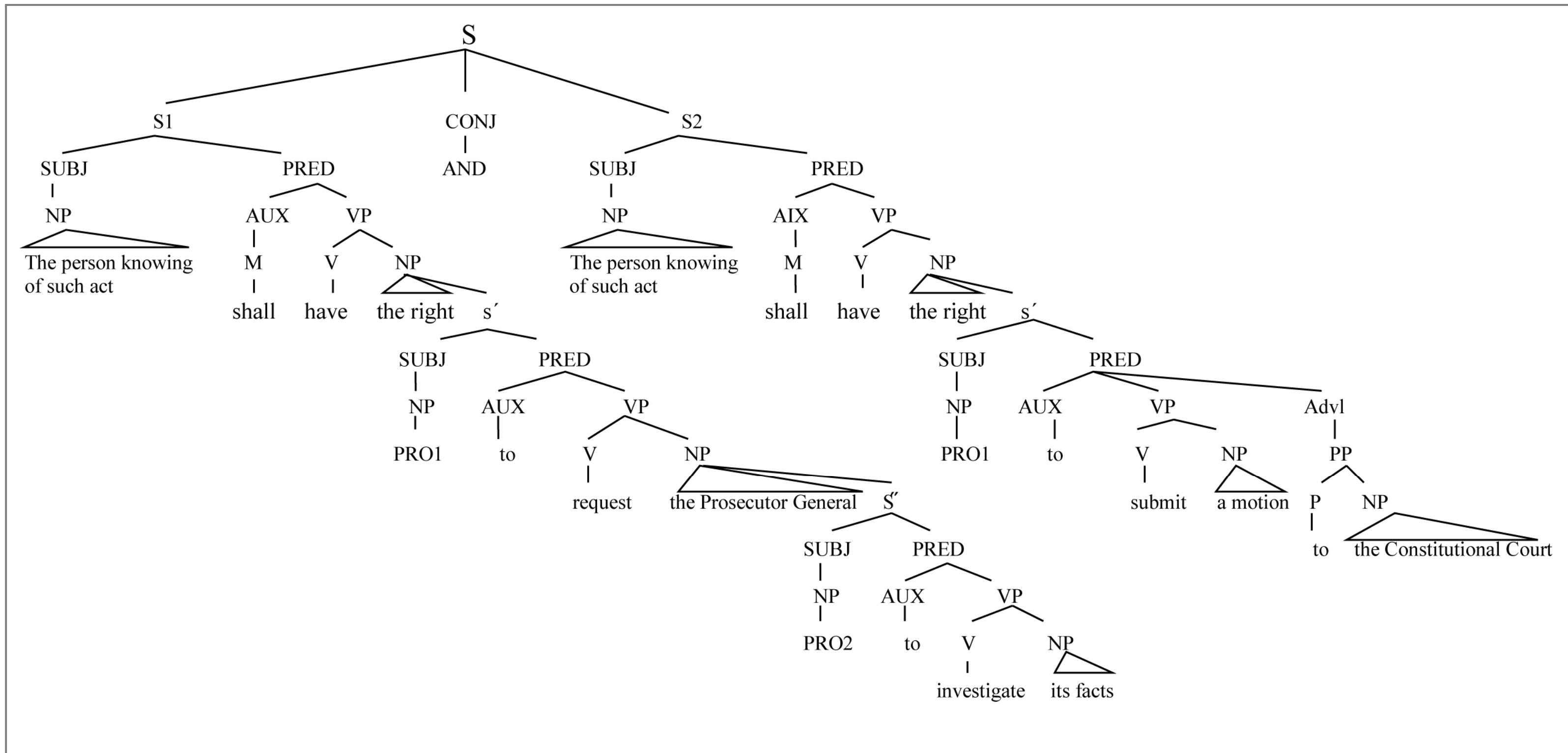


Figure 4: *Tree Diagram 1* displays the underlying meaning of Interpretation 1. Inside node S1, node PRO1 represents "the *person* knowing of such act" which commands the verb "request," which in turn dominates the NP node "the Prosecutor General." The tree diagram shows no connection or link between the Prosecutor General and the Constitutional Court, which means the Prosecutor General has no right to submit a motion. Inside node S2, the tree diagram shows the connection between node PRO1 "the *person* knowing of such act" and the Constitutional Court—meaning only "the *person* knowing of such act" shall have the right to submit a motion.

2. Reading Tree Diagram 1

Interpretation 1

The tree diagram of Interpretation 1 represents the underlying structure of the statute of Paragraph 2. The tree diagram shows no connection between the Prosecutor General and the Constitutional Court. That is, there is *no* solid line linking the NP node (the Prosecutor General) to the NP node (the Constitutional Court) because they appear in different families. The NP node (the Prosecutor General) is dominated by node S1, while the NP node (the Constitutional Court) is dominated by node S2. That is, these two legislative branches are not in the same family. Syntactically, the connections between nodes within a given tree diagram are linked by solid lines. The tree diagram of Interpretation 1 demonstrates that “the *person* knowing of such act” is not allowed to submit a motion to the Prosecutor General but rather that he or she shall submit a motion to the Constitutional Court only. The tree diagram of Interpretation 1 indicates that the Prosecutor General shall investigate *its facts* and stops there. The Prosecutor General shall do nothing after *investigating its fact*s. “The *person* knowing of such act” does not request the Prosecutor General to submit a motion to the Constitutional Court. Interpretation 1 indicates that the Prosecutor General is not authorized to deal with the Constitutional Court. As indicated by the solid lines in the tree diagram, there is no connection between the two legislative bodies.

The following is the connectivity among the internal parts of Paragraph 2.

Inside node S1, node PRO1 (under node Ś dominated by NP node “the right”) refers to “the *person* knowing of such act” that shall request the Prosecutor General to investigate the facts of the act. The tree diagram suggests that the function of the Prosecutor General ends there—thus, the Prosecutor General is limited to investigation. Node PRO2 (under node S̋ dominated by NP node ‘the Prosecutor General’) refers to the Prosecutor General himself.

Inside node S2, node PRO1 (under node Ś dominated by NP node ‘the right’) refers to “the *person* knowing of such act” that shall submit a motion (directly) to the Constitutional Court. According to the tree diagram of Interpretation 1, the NP node (the Constitutional Court) is referred to as the “terminal node,” which ends the tree diagram. These solid lines—from node S2 down to the terminal NP node (the Constitutional Court)—indicate that those nodes are related to one another. The tree diagram of node S2 enables readers to see that there is *no* connection between “the *person* knowing of such act” and “the Prosecutor General.”

The entire tree diagram of Interpretation 1 demonstrates that there is no connection between the Prosecutor General (which is under node S1) and the Constitutional Court (which is under node S2).

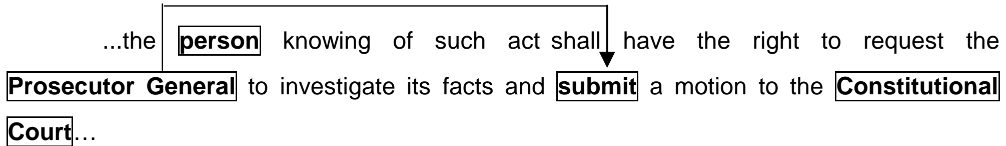
3. Finding: Absurd Interpretation

Based on the parsing of Interpretation 1, the study suggests that the interpretation that allows “the *person* knowing of such act” to submit a motion directly to the Constitutional Court is absurd. The absurdity is attested by the syntactic analysis. That is, the tree diagram shows no connection between the Prosecutor General and the Constitutional Court, which means that the law allows the Prosecutor General to investigate the facts of the act and terminates the Prosecutor General’s function there. According to the tree diagram of Interpretation 1, the law does not allow the Prosecutor General to approach the Constitutional Court. This reading seems illogical because it interprets against the constitutional intent—that the Prosecutor General is to deal with the Constitutional Court when it comes to legal matters.

As attested by linguistic methodology, interpreting the statute of Paragraph 2 to allow lay people to submit a motion to the Constitutional Court is not plausible.

4. Interpretation 2:

The arrow in the following refers to the person that is to submit a motion to the Constitutional Court.



There were 60 participants that linked a solid line from "the *Prosecutor General*" to the verb "submit." Interpretation 2 specifies that the Prosecutor General shall submit a motion to the *Constitutional Court*. Supported by 59.69 % of the 104 participants, Interpretation 2 is the majority interpretation.

Parsing

Interpretation 2 may be parsed as follows:

The *person* knowing of such act shall have the right to request the Prosecutor General to investigate its facts *and* the *person* knowing of such act shall have the right to request the Prosecutor General to submit a motion to the Constitutional Court.

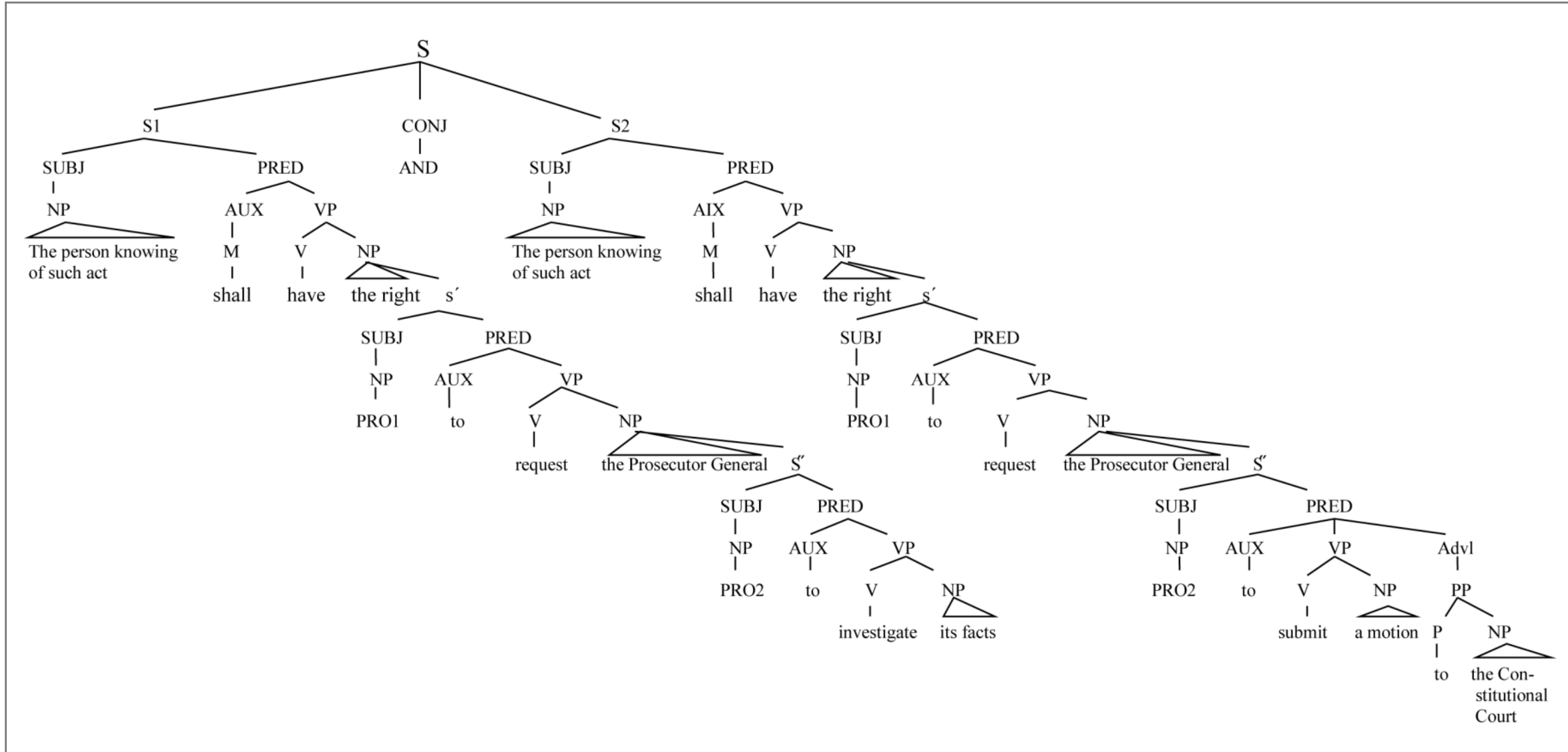


Figure 5: *Tree Diagram 2* displays the underlying meaning of Interpretation 2. The tree diagram shows that the right of "the *person* knowing of such act" goes no further than requesting the Prosecutor General to investigate the facts of the act and requesting the Prosecutor General to submit a motion to the Constitutional Court.

5. Reading Tree Diagram 2

Interpretation 2

The connectivity among the internal parts of the statute given reads as follows:

Inside node S1 there are only two parties: "the *person* knowing of such act" and the *Prosecutor General*. Node PRO1 (under node Ś dominated by NP node "the right") refers to "the *person* knowing of such act," which controls the verb "to request." Node PRO2 (under Node S̋ dominated by NP node "the Prosecutor General") refers to "the Prosecutor General," which controls the verb "to investigate." This parsing makes it evident that "the *person* knowing of such act" can only *request* but not submit. That is, "the *person* knowing of such act" shall have the right to *request* only.

Inside node S2, there are three parties: "the *person* knowing of such act," the Prosecutor General, and the Constitutional Court. Node PRO1 (under node Ś dominated by NP node "the right") refers to "the *person* knowing of such act," which controls the verb "to request." Node PRO2 (under node S̋ dominated by the NP node "the Prosecutor General") refers to "the Prosecutor General," which controls the verb "to submit." The tree diagram specifies that node PRO2, "the Prosecutor General," shall submit a motion to the Constitutional Court.

The tree diagram of Interpretation 2 demonstrates that "the *person* knowing of such act" is not authorized by Paragraph 2 to submit a motion directly to the Constitutional Court. He or she shall exercise his or her right through the Prosecutor General only.

Inside both node S1 and node S2, the tree diagram makes it explicitly clear that the role of "the *person* knowing of such act" is to *request* the Prosecutor General to investigate the facts of the act. The function of the Prosecutor General is not only to *investigate* the facts but also to *submit* a motion.

6. Finding: Plausible Interpretation

Interpretation 2 promotes the rule of law. The results of the study indicate that a petition should be made under the responsibility of the Prosecutor General. The Prosecutor General should be the mediator between "the *person* knowing of such act" and the Constitutional Court.

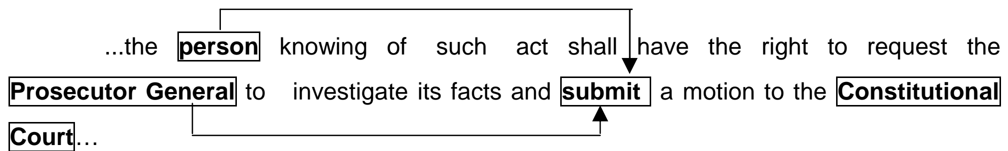
According to the linguistic methodology (under node S2 of the diagram above), the Prosecutor General is located (centered) between "the *person* knowing of such act" and the Constitutional Court. Interpretation 2 enhances the constitutional intent—that the Prosecutor General performs legal duty on behalf of lay people.

It is interesting that the Nitirat Group of law scholars and the majority (59.69%) of the scholars participating in this study shared the same interpretation of Paragraph 2. Indeed,

the interpretation is a plausible reading of the law that enhances the legislature's intent and promotes the function of the Prosecutor General.

7. Interpretation 3:

In the follwing, there are two lines that indicate the bodies that are allowed to submit a motion to the Constitutional Court.



Three participants out of the 104 used solid lines to link both "the *Prosecutor General*" and "the *Constitutional Court*" to the verb "submit." This very small minority of 2.88% interpreted that "the *person* knowing of such act" is lawful in submitting a motion through the Prosecutor General and in submitting a motion directly to the Constitutional Court; that is, he or she is allowed to directly or indirectly submit a motion.

Parsing

Interpretation 3 may be parsed as follows:

The *person* knowing of such act shall have the right to request the Prosecutor General to investigate its facts *and* the *person* knowing of such act shall have the right to request the Prosecutor General to submit a motion to the Constitutional Court *and* the *person* knowing of such act shall have the right to submit a motion to the Constitutional Court.

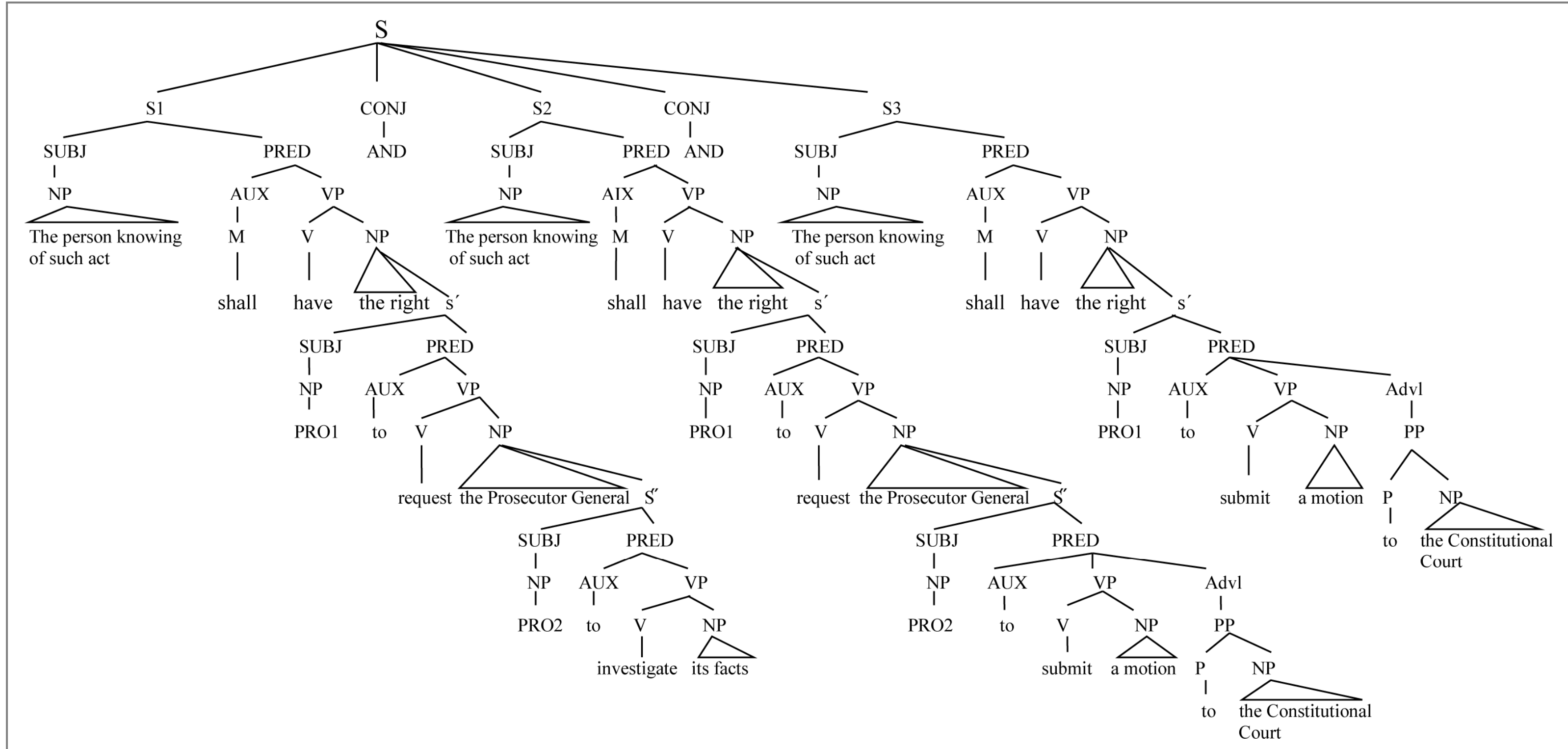


Figure 6: *Tree Diagram 3* displays the underlying structure of Interpretation 3. Unique to this diagram is the *extension* of the meaning compared with the meanings discerned from the previous interpretations. The extension is observed when the interpretation is made by adding one more coordinating “AND,” which means one more sentences is added. Node S2 shows that “the *person* knowing of such act” shall submit a motion through the Prosecutor General. Node S3 show that “the *person* knowing of such act” shall submit a motion directly to the Constitutional Court.

8. Reading Tree Diagram 3

Interpretation 3

Compared to the previous interpretations, interpretation 3 adds one extra sentence to Tree Diagram 3, which means that it contains three sentences with *two* coordinating "ands," whereas both Tree Diagram 1 and Tree Diagram 2 contain two sentences joined by only *one* coordinating "and." With an extra sentence added, Interpretation 3 may be said to extend an expression that was not written in the Constitution 2007, Section 68, Paragraph 2. Originally, Paragraph 2 contained only *one* coordinating "and." Interestingly, the addition of one additional sentence to Interpretation 3 enables "the *person* knowing of such act" to submit a motion in one of two ways. That is, he or she can exercise his or her right to submit a motion through "the Prosecutor General" or directly to "the Constitutional Court." Adding an extra sentence (node S3) to Interpretation 3 means that the interpreters added one extra right, thus allowing "the *person* knowing of such act" to submit a motion to the Constitutional Court.

In short, Interpretation 3 assigns *three* rights to "the *person* knowing of such act"—(1) the right to request "the Prosecutor General" to investigate its facts, (2) the right to request "the Prosecutor General" to submit a motion to the Constitutional Court, *and* (3) the right to submit a motion to the Constitutional Court.

9. Finding: Absurd Interpretation and Extension of Law

Interpretation 3 represents an absurd reading of the text. It is a mixed interpretation that allows two channels for approaching the Constitutional Court. On the one hand, allowing lay people to submit a motion directly to the Constitutional Court while terminating the function of the Prosecutor General to submit a petition to the Constitutional Court does not reflect the legislature's intent. On the other hand, allowing lay people to submit a motion with no source of sound reasoning is impractical. The law does not recommend that "the *person* knowing of such act" investigate its facts, but the law does require the Prosecutor General to investigate the case and submit a motion to the Court if the investigation is sound. The linguistic methodology indicated that the law was extended. However, according to *Guides for Construction of Statutes* in 5.6., "the primary function of the courts is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted or to omit what has been inserted. The judges declare the text and substance of the law is. Thai is, the courts interpret the law; they do not write the law. This flows from the constitutional principle of separation of powers. The judicial branch may not exercise the lawmaking powers of the legislative branch" (Landau *et al.* 2009).

Here, the inserted expression is in node S3 of the tree diagram: *AND the person knowing of such act shall have the right to submit a motion to the Constitutional Court*. Briefly, Interpretation 3 violates the rule of statutory construction and is not in accord with the literal rule, which states that "where the statutory language and legislature's intent are clear and plain, the judicial inquiry terminates there. A court is therefore not permitted to distort a statute's meaning to conform with the judge's own views of sound social policy.

(http://lawpavilionpersonal.com/ipad/books/20694.pdf)

The linguistic approach to the interpretation of legal texts is so efficient that academics that are well trained in transformational grammar can correctly analyze complex and compound sentence structures. Those interpreters determining the meaning of a law outside linguistic methodology could be perceived as idiosyncratic, using either personal or intuitive judgment.

The Implementation of Paragraph 2

The objective of the current study is to assist legislative drafters seeking to ascertain the law, the legislature's intent, of Paragraph 2. When words are not enough to fix the plain meaning of the law, graphics may be used to visualize legislative requirements.

Given the three interpretations of Paragraph 3, it is evident that three parties are involved in the legal procedure:

(1) The person knowing of such act;
(2) The Prosecutor General; and
(3) The Constitutional Court.

According to the text of Paragraph 2, the purposes of law are:

(1) To promote the right to protect the parliamentary democracy of the land;
(2) To prevent a person from overturning the parliamentary democracy of the land;
(3) To permit or confer a right to a person knowing of such act to inform the Prosecutor General;
(4) To mandate the Prosecutor General to investigate its fact; and

(5) To mandate the Prosecutor General (and the person knowing of such act) to submit a motion to the Constitutional Court.

However, the controversy lies in the legislature's intent of (5). Does the law intend to grant the right of the person knowing of such act to submit a motion to the Constitutional Court?

The diagram (graphic) below is a fictional law based on Interpretation 2, which was supported by the majority of the interpreters in this study. The graphic represents the plain meaning of Paragraph 2 expressed in words as follows:

The person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court.

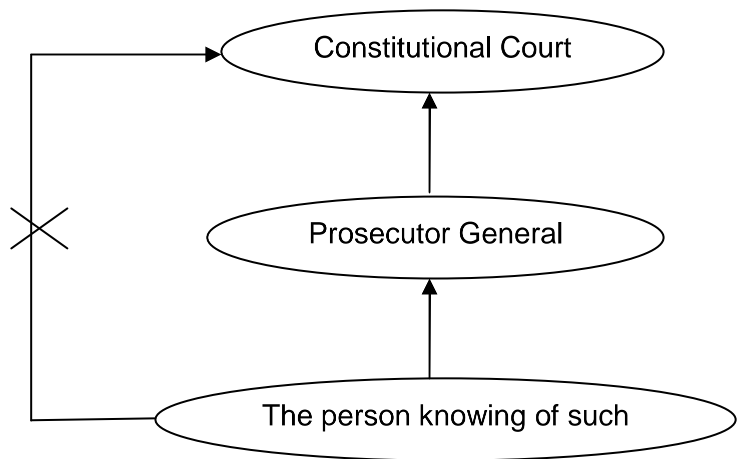


Figure 7: The *graphic* illustrates the legal procedure of Paragraph 2. In case that a person knows of such act, he or she is *entitled* to inform the Prosecutor General. The Prosecutor General is *required* to investigate its fact and *submit* a motion to the Constitutional Court. The Constitutional Court shall *not* accept a motion from the person knowing of such act.

Implication and Recommendations

The primary goal of the present research was to attest to the various interpretations of Paragraph 2 to justify the validity of each interpretation. The research results indicated that Interpretation 2 is the most plausible because it is the most practical and applicable. Interpretation 2 shows the integrity of the three parties: the person knowing of such act, the Prosecutor General, and the Constitutional Court. Interpretation 1, in contrast, breaks the relationship between the Prosecutor General and the Constitutional Court. Interpretation 1 allows the *person* knowing of such act to directly submit a motion to the Constitutional Court

without investigation, even though the law does require investigation of its fact before submitting a motion. The study reveals that Interpretation 3 is the most confusing because it includes both Interpretation 1, which breaks the relationship between the Prosecutor General, and the Constitutional Court and Interpretation 2 that connects the three parties—the *person* knowing of such act is immediately connected to the Prosecutor General and the Prosecutor General is immediately connected to the Constitutional Court. Interpretation 3 demonstrates a bad law because it shows a self-conflict.

Based on the research findings, this study suggests some practical implications for legislative drafters and the statutory interpreters, the courts:

For legislative drafters, the legislation of Paragraph 2 should be written in a way that promotes the integrity of the three parties codified in the law. Paragraph 2 should be rewritten using plain language with a simple sentence structure. Drafters should follow the practice of international law drafting standards or approaches.

For interpreters or courts, linguistic training is needed because statutory reading involves the study of legal texts, including lexical semantics (word meaning) and the syntax of the text. Linguistic competence is crucial when it comes to the complexity of a legal text.

1. Paragraph 2: Against Present Tense and Indicative Mood

Generally, laws should be drafted in the present tense using the indicative mood to ascertain the certainty of the law. The indicative mood may be expressed in modal verbs as follows (Lung 2012; Sullivan 2003; Moore and Namet 2010):

- Use “must” instead of ‘shall”
  “Shall” imposes an obligation to act, but may be confused with prediction of future action.
  “Must” imposes obligation, and indicates a necessity to act.
- Use “may” to indicate discretion to act, and to confer power, privilege, or right.
- Use “will” to predict future action.
- Use “must not” to indicate prohibition.

The indicative mood in law is expressed in active, affirmative and declarative sentences (present tense). Nonfinite verbs such as infinitives, participles and gerunds do not express the indicative mood.

However, it is evident that the text of Paragraph 2 was not drafted in the indicative mood. It was drafted with confusing the “shall” making it difficult to determine the intended meaning of the law.

The use of the infinitives “to request,” “to investigate” and “(to) submit” reveals that the statute lacks the indicative mood, which denotes indeterminacy because nonfinite verbs lack the indicative mood:

> […the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court…]

The text of Paragraph 2 reveals two legislative intents. That is, the statute-

(1) confers a right, power, or privilege, and

(2) imposes a duty or obligation.

The law of Paragraph 2 is intended to confer power, privilege, or right to the *person* knowing of such act. As such, the modal verb “may” is most appropriate for carrying the legislative intent of Paragraph 2 and the modal verb “may” should replace the phrase “shall have the right” because “may” already includes the meaning of the phrase (“may” = to confer a right to do something). Furthermore, it seems that the expression “shall have the right” communicates advice or consultation rather than direction or an imperative. A clear operative law should be directive. The expression “shall have the right” does not reflect the legislature’s intent of Paragraph 2 of Section 68, which is intended to confer power or a right to the person knowing of such act and to impose duty on the Prosecutor General.

Paragraph 2 was drafted with the verb “request,” which communicates advice. The verb “request” includes the sense of submissiveness, but the law of Paragraph 2 is intended to equip the *person* knowing of such act with power. Submissiveness denotes lack of full power.

The verb “request” is a verb that carries the subjunctive mood, which is used to talk about something imaginary, hypothetical. “Request” is a verb that creates doubt in the sense that what is requested may or may not be achieved or satisfied. But a statute law deals with facts at hand and not with hypothetical cases. Something factual or real is expressed in the present tense (in the indicative mood), but the verb “request” is an infinitive that lacks tense. As such the verb “request” does not fit the meaning of Paragraph 2.

The following is the underlying meaning of the subjunctive mood of the expression “…the person knowing of such act shall have the right to request the Prosecutor General investigate its facts…”

The person knowing of such act *requests* that the Prosecutor General (should) investigate its facts. The complement clause of the verb “request” denotes future time but law requires the present tense to deal with cases at hand.

A verb that may be used instead of the verb “request” is “inform.” The verb “inform” best reflects the legislative intent of Paragraph 2. The *person* knowing of such act has a right

as conferred by the law to “inform” the Prosecutor General, who has a duty to investigate its facts as imposed by the law in this paragraph.

Therefore, a simple, clearer draft of Paragraph 2 looks like the following:

> [I]n the case where a person or a political party has committed the act under paragraph one:
>
> (1) the person that knows of such act may *inform* the Prosecutor General of such act
> (2) the Prosecutor General *must* investigate its facts and
> (3) the Prosecutor General *must* submit a motion to the Constitutional Court if there is evidence that a person or a political party has committed the act under paragraph one.

The fictitious version of Paragraph 2 presented above is clearer because it is drafted in the indicative mood using the present tense. More importantly, the verb in each clause is preceded by its overt subject, which makes the statute clearer with no dispute over who does what as required by the law. The noun phrase “the Prosecutor General” in (3) is repeated to make the law clear. The noun should be repeated rather than use a pronoun in legislative drafting to make the law clear (Moore and Namet 2010). A statute should be written in narrative style, and the information mentioned earlier should be included with what is new (Horn 2012:27):

> Although the familiar material is redundant, it is included because it helps the reader integrate the new information by relating it to what she already knows. If the new information is difficult, highly original or for any reason remote from what the reader already knows, writers typically provide more context and repeat it more than once. The more challenging the material, the greater the need for both types of redundancy, for references to familiar material and for repetition of what is new.

The fictitious law is drafted with numbered sentences because the law requires processes or procedures to achieve its purpose. The law proposes procedures step by step to avoid confusion. The number used is an operative tool for practitioners.

With the original version of Paragraph 2 being complex, the semi-colons are introduced to break the complex statute into smaller parts, making it clearer and easier to

understand. Using semi-colons in legislative drafting is practiced in modern legislation to make statutory texts clear to the readers (Sullivan 2003).

Conclusion

Paragraph 2 of Section 68 of the English version of the Thai Constitution (2007) is disturbingly complex because it contains an embedded non-finite clause with a coordinator "and." The statement has been interpreted variously, thus indicating that the clause is structurally ambiguous. The interpretations of 104 academics were divided into three categories. Of the academics, 29.8% supported the premise that "the *person* knowing of such act" has the right to submit a motion directly to the Constitutional Court, whereas 59.69% argued that only the Prosecutor General had the right to submit a motion to the Constitutional Court. There was a relatively small number of interpreters (2.88%) that contended that submission of a motion can be made through two channels; that is, through the Prosecutor General or directly to the Constitutional Court. A linguistically-integrated interpretation using tree diagrams and parsing explicitly reveals that the Prosecutor General is the most logical and legitimate body for submitting a motion to the Constitutional Court. According to the tree diagrams, a solid line did not connect or link the verb "submit" to either "the Prosecutor General" or "the Constitutional Court" at any one time. The tree diagrams showed that if a solid line links the verb "submit" to "the Prosecutor General," it does not link the verb "submit" to "the Constitutional Court." There was a case in which the interpreters connected the verb "submit" to both legislative branches, but it appears in the tree diagrams that an extra sentence was added to the law. This distorts the original meaning of Section 68, Paragraph 2. The research suggests that the Prosecutor General is to investigate facts and can lawfully submit a motion to the Constitutional Court. Linguistic textual analysis is a well-informed, scientific approach to interpreting complex sentences. As such, linguistic knowledge should be considered and applied when people are concerned with the interpretation of a complex sentence structure within the written law of the Constitution.

Acknowledgements

The author extends his special gratitude to all of the academics from the universities and institutions for their kind participation in interpreting Paragraph 2 of Section 68 of the English version of the Thai Constitution (2007). Their reading of the statute reflected a fundamentally different meaning from that provided by the law. The author hopes that their

reflections will inform members of the public that are interested in the channels of submission of a motion to the Thai Constitutional Court.

References

คำวินิจฉัย ๑๘-๒๒/๒๕๕๕ คำร้องให้ศาลรัฐธรรมนูญพิจารณาวินิจฉัยตามรัฐธรรมนูญมาตรา ๖๘. Retrieved October 8, 2012, from http://www.constitutionalcourt.or.th/index.php?option=com_content&view=article&id=504&Itemid=269&lang=th

งัดรธน.ฉบับอังกฤษยัน 'ศาล' ไม่ผิด สั่งรับตีความแก้ 'ม.291' 'วสันต์' ปลงมือมีดข่มขู่ทีม กม.สภาดันให้โหวต 100 ส.ส.พท.ลุยลงชื่อ. (2555, 7 มิถุนายน). *มติชน*, 1, 14. Retrieved November 10, 2013, from http://www.matichonelibrary.com/elibrary.php?src_grp=

แถลงการณ์ "นิติราษฎร์" ค้านศาลรัฐธรรมนูญ ผู้มีสิทธิยื่นคำร้องต่อศาลรัฐธรรมนูญ (4 มิถุนายน 2555). Retrieved March 19, 2013 from http://www.dailynews.co.th/politics/117982

รัฐธรรมนูญแห่งราชอาณาจักรไทย 2550. Retrieved June 21, 2014, from http://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/parliament_law/1320070827163114_1.pdf

Arden, M. (2008). The Impact of Judicial Interpretation on Legislative Drafting. Retrieved August 2, 2013, from www.opc.gov.au/calc/docs/Loophole_papers/Arden_Aug2008.rtf

Bangkok Post June 5, 2012. Charter court's order is final, says respected former senate speaker. Retrieved June 21, 2014, from http://www.bangkokpost.com/lite/topstories/296702/former-senate-speaker-court-order- is-final

Celce-Murcia, M., D. Larsen-Freeman, and H. A. Williams. (1999). *The Grammar Book: an ESL/EFL Teacher's Course*. Boston, MA: Heinle & Heinle.

Constitution of The Kingdom of Thailand B.E. 2550 (2007). Retrieved June 21, 2014, from http://library2.parliament.go.th/giventake/content_cons50/cons2550e-kd.pdf):

Constitution Drafting Commission, Constituent Assembly. (2007). Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Retrieved August 11, 2012, from http://www.senate.go.th/th_senate/English/constitution2007.pdf

Cowan, R. (2008). *The Teacher's Grammar of English: a course book and reference guide*. New York, NY: Cambridge University Press.

D'Armato, A. (2010). The Injustice of Dynamic Statutory Interpretation. Retrieved September 1, 2013, from http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/87

Eskridge, W. N. (1987). Dynamic Statutory Interpretation. Retrieved September 1, 2013 from

http://digitalcommons.law.yale.edu/fss_papers/1505

European Parliament, Council of the European Union and European Commission. (2003). Joint Practical Guide of the European Parliament, the Council and the Commission, for the persons involved in the drafting lf legislation within the Community institutions. Retrieved August 5, 2013 from http://eur-lex.europa.eu/en/techleg/pdf/en.pdf

Farber, D.A. (1995). Hermeneutic Tourist: Statutory Interpretation in Comparative Perspective. Retrieved September 1, 2013, from http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=2579&context=facpubs

Finegan, E. (1999). *Language: Its Structure and Use*, Third Edition. New York: Harcourt Brace College Publishers.

Horn, N. (2012). Loophole. Legislative Section Headings: Drafting Techniques, Plain Language, and Redundancy. Retrieved August 8, 2013, from www.opc.gov.au/calc/docs/Loophole/Loophole_Apr12.doc

Interpretation of Statute—Rules of Interpretation: Whether the courts have the duty to interpret the provisions of a statute as it is. Retrieved October 22, 2013, from http://lawpavilionpersonal.com/ipad/books/20694.pdf

Jellum, L. D., and D. C. Hricik. (2009). *Modern statutory interpretation: problems, theories, and lawyering strategies*, Second Edition. Durham, N.C: Carolina Academic Press.

Kelso, R.R. (1994). Styles of Constitutional Interpretation and the Four Main Approaches to Constitutional Interpretation in American Legal history. Retrieved September 28, 2013, from http://scholar.valpo.edu/cgi/viewcontent.cgi?article=1924&context=vulr

Klinck, D. (2007). Statutory interpretation. Retrieved September 12, 2013, from http://lsa.mcgill.ca/pubdocs/browse.php?f=1&p=65&by=1

Landau, J.L., A. E. Villella and S. J. Johansen. (2009). *Interpreting Oregon Law*, 2009 Edition. Oregon State Bar. Legal Publications Staff. Retrieved October 8, 2013, from http://www.osbar.org/_docs/legalpubs/tocs/IOLToc.pdf

LAWnLinguistics Not about the linguistics of lawns: Three syntactic canons. (2012). Retrieved September 2, 2013, from http://lawnlinguistics.com/2012/07/13/three-syntactic-canons/

Lung, W.Y. (2012). Drafting Legislation in Hong Kong. *A Guide to Styles & Practices*. Hong Kong: Law Drafting Division. Department of Justice. Retrieved September 3, 2013, from http://www.doj.gov.hk/eng/public/pdf/2012/Drafting_booke.PDF

Malmkjaer, K. (2002). *The Linguistics Encyclopedia*, Second Edition. London: Routledge.

Moore, A.E. and D. Namet. (2010). Massachusetts General Court Legislative Research and Drafting Manual (5th edition). Retrieved September 9, 2013 from http://archives.lib.state.ma.us/bitstream/handle/2452/47796/ocn549554381.pdf?sequence=1

Penfold, H. (2001). When words aren't enough: Graphics and other innovations in legislative drafting. Retrieved September 1, 2013, from http://www.opc.gov.au/plain/docs/words_arent_enough.pdf

Perrault, S.J. (2008). *Merriam-Webster's Advanced Learner's English Dictionary*. Springfield: Merriam-Webster.

Phlogiston, P. Q. (n.d.). Speculative Grammarian: Cartoon theories of linguistics. Retrieved September 1, 2013, from http://specgram.com/CLIII.4/08.phlogiston.cartoon.zhe.html

Rifa and Reza (n.d.). The mischief rule of statutory interpretation. Retrieved March 22, 2012, from http://lawcare87.blogspot.com/2012/03/mischief-rule-of-statutory.html

Roberts, N. B. (1998). *Analyzing Sentences: An Introduction to English Syntax*. New York: Longman.

Family Guardian (n.d.). Rules for Construction of Statutes. Retrieved October 1, 2013, from (http://famguardian.org/TaxFreedom/LegalRef/StatConstruction/OrLegCounsRulesOfStConst.pdf)

Scalia, A., and B. A. Garner. (2012). *Reading Law: The Interpretation of Legal Texts*. St. Paul, MN: Thomson/West.

Sobin, N. (2011). *Syntactic Analysis: the Basics*. Chichester, West Sussex: Wiley-Blackwell.

Solum, L. B. (2008). Semantic Originalism. Retrieved July 2, 2012, from http://papers.ssrn.com/sol3/papers.cfm?abstract-id=1120244

Sullivan, D.E. (2003). *Massachusetts Senate Legislative Drafting and Legal Manual*, Third Edition. Retrieved August 20, 2013, from legislationline.org/download/.../73fc5e204d2e468b77be2d0718f7.pdf

Sullivan, R. (n.d.) (a). The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation. Retrieved March 18, 2013, from http://aix1.uottawa.ca/~resulliv/legdr/pmr.html

Sullivan, R. (n.d.) (b). Statutory Interpretation in Canada. The Legacy of Elmer Driedger in *Statutory Interpretation. Principle and pragmatism for a new age*. Education Monograph 4. Judicial Commission of New South Wales, Sydney. Retrieved September 3, 2013, from http://www.judcom.nsw.gov.au/publications/education-monographs-1/monograph4/06_sullivan.pdf

Tushnet, M, T. Fleiner and C. Saunders. (2013). *Routledge Handbook of Constitutional Law*. New York: Routledge.

APPENDIX 1: Questionnaire

Dear Instructors or Lecturers:

This questionnaire is part of a study being conducted by the researcher on Disambiguation of the Text of Paragraph 2 of Section 68 of the Thai Constitution (2007): A Transformational Grammar Perspective.

To gain an informed analysis of the study with detailed commentary, it is vital that information from experts be collected for this purpose. In this regard, I would like to ask you to please complete this questionnaire survey.

All information you provide will be kept confidential and under no circumstances will your individual responses be released to the public.

Thank you for your participation.

Sincerely yours,

Asst. Prof. Somchit Burakorn

Part I: Personal Information

Directions: Please provide the following information by putting a check [✓] in the brackets.

1. Age: [ ] < 24 [ ] 25-30 [ ] 31-40 [ ] 41-50 [ ] 51-60 > years old

2. Sex: [ ] male [ ] female

3. Mother tongue: [ ] Thai [ ] English

4. Degree: [ ] Doctoral Degree [ ] Master's Degree [ ] Bachelor's Degree

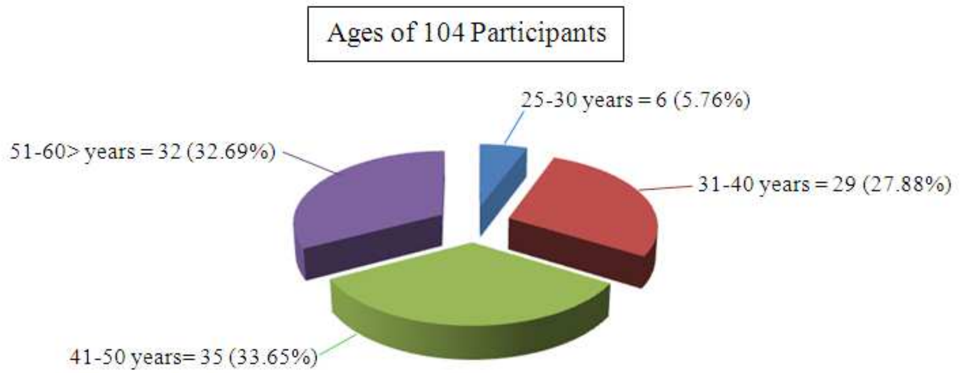
5. Academic title: [ ] Assistant Professor [ ] Associate Professor
[ ] Professor [ ] N/A (Lecturer or Instructor)

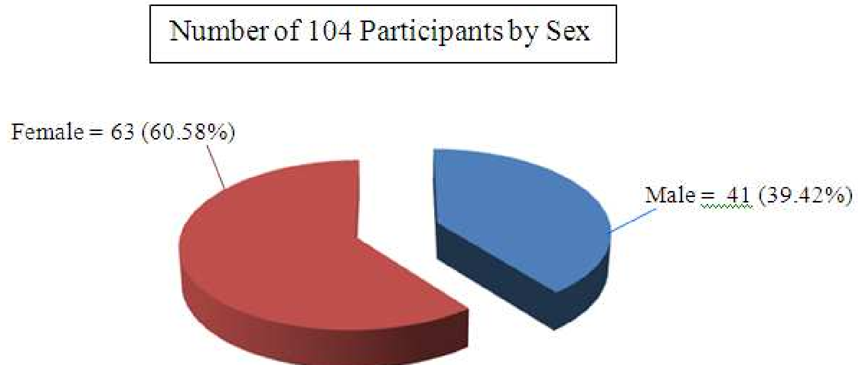
6. Years of Teaching Experience: [ ] 1-10 [ ] 11-20 [ ] 21-30 [ ] 31-40 > years

7. Institution of employment: [ ] State university [ ] Private university
[ ] State college [ ] Private college

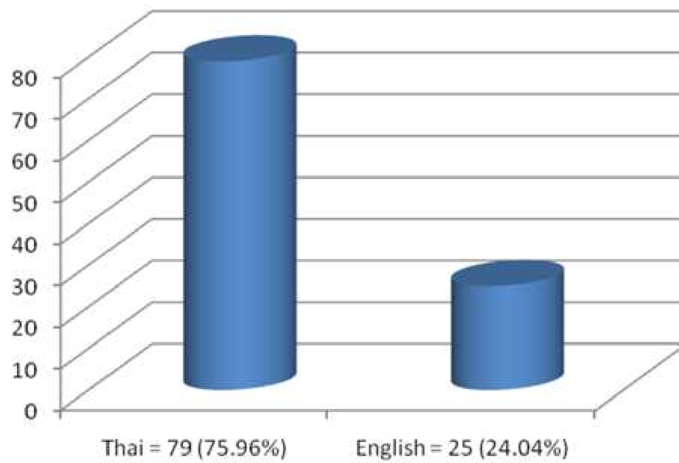
Part II: Demographic Information

The following is a graphic analysis of personal information of 104 participants.

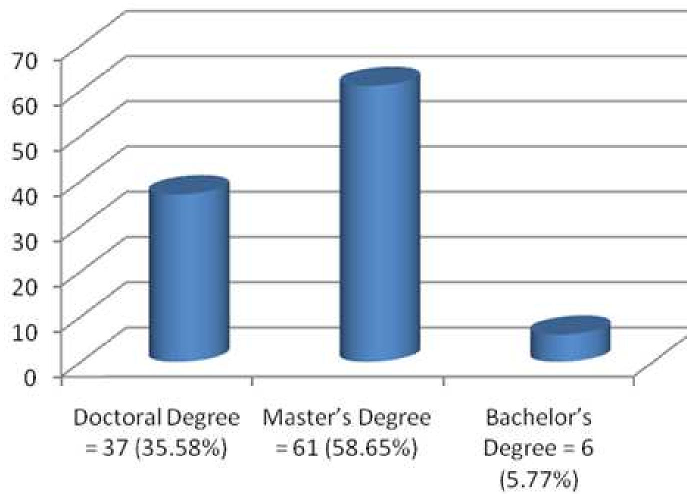


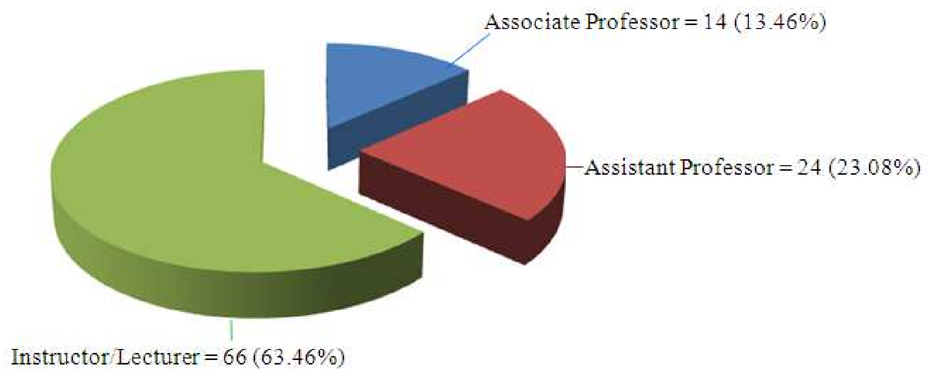


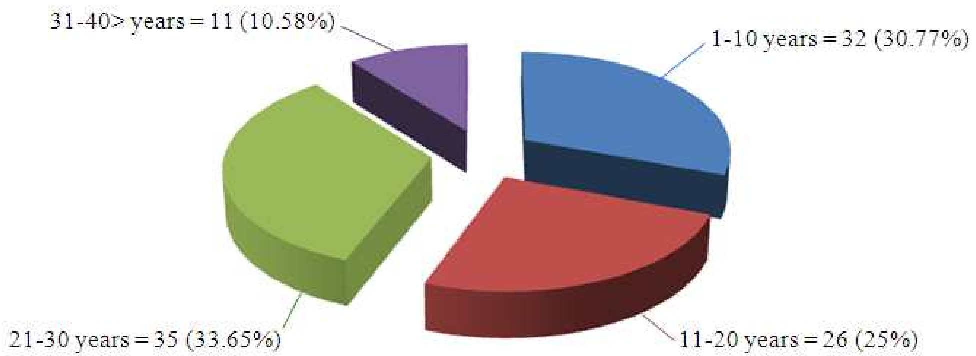
Mother Tongue of 104 Participants



Educational Levels of 104 Participants




Academic Titles of 104 Participants
Associate Professor = 14 (13.46%)
Assistant Professor = 24 (23.08%)
Instructor/Lecturer = 66 (63.46%)


Number of Years of Teaching Experience
31-40> years = 11 (10.58%)
1-10 years = 32 (30.77%)
21-30 years = 35 (33.65%)
11-20 years = 26 (25%)

APPENDIX 2: Section 68 of the Thai Constitution (2007)

A. Thai Version (http://www.ombudsman.go.th/10/documents/law/Constitution2550.pdf)

ส่วนที่ ๑๓
สิทธิพิทักษ์รัฐธรรมนูญ

มาตรา ๖๘ บุคคลจะใช้สิทธิและเสรีภาพตามรัฐธรรมนูญเพื่อล้มล้างการปกครองระบอบประชาธิปไตยอันมีพระมหากษัตริย์ทรงเป็นประมุขตามรัฐธรรมนูญนี้ หรือเพื่อให้ได้มาซึ่งอำนาจในการปกครองประเทศโดยวิธีการซึ่งมิได้เป็นไปตามวิถีทางที่บัญญัติไว้ในรัฐธรรมนูญนี้ มิได้

ในกรณีที่บุคคลหรือพรรคการเมืองใดกระทำการตามวรรคหนึ่ง ผู้ทราบการกระทำดังกล่าวย่อมมีสิทธิเสนอเรื่องให้อัยการสูงสุดตรวจสอบข้อเท็จจริงและยื่นคำร้องขอให้ศาลรัฐธรรมนูญวินิจฉัยสั่งการให้เลิกการกระทำดังกล่าว แต่ทั้งนี้ ไม่กระทบกระเทือนการดำเนินคดีอาญาต่อผู้กระทำการดังกล่าว

ในกรณีที่ศาลรัฐธรรมนูญวินิจฉัยสั่งการให้พรรคการเมืองใดเลิกกระทำการตามวรรคสอง ศาลรัฐธรรมนูญอาจสั่งยุบพรรคการเมืองดังกล่าวได้

ในกรณีที่ศาลรัฐธรรมนูญมีคำสั่งยุบพรรคการเมืองตามวรรคสาม ให้เพิกถอนสิทธิเลือกตั้งของหัวหน้าพรรคการเมืองและกรรมการบริหารของพรรคการเมืองที่ถูกยุบในขณะที่กระทำความผิดตามวรรคหนึ่งเป็นระยะเวลาห้าปีนับแต่วันที่ศาลรัฐธรรมนูญมีคำสั่งดังกล่าว

B. English Version (http://www.senate.go.th/th_senate/English/constitution2007.pdf**)**

Part 13
Rights to Protect the Constitution

Section 68. No person shall exercise the rights and liberties prescribed in the Constitution to overthrow the democratic regime of government with the King as Head of the State under this Constitution or to acquire the power to rule the country by any means which is not in accordance with the modes provided in this Constitution.

In the case where a person or a political party has committed the act under paragraph one, the person knowing of such act shall have the right to request the Prosecutor General to investigate its facts and submit a motion to the Constitutional Court for ordering cessation of such act without, however, prejudice to the institution of a criminal action against such person.

In the case where the Constitutional Court makes a decision compelling the political party to cease to commit the act under paragraph two, the Constitutional Court may order the dissolution of such political party.

In the case where the Constitutional Court issues an order dissolving the political party under paragraph three, the right to vote of the dissolved political party's leader and executive committee members at the time of the commission of the offence

~ 28 ~

under paragraph one shall be suspended for the period of five years as from the date of such order of the Constitutional Court.