* denotes decisions from courts other than SCC

STATUTORY INTERPRETATION

1. Identify Interpretation Approach

a. Plain meaning rule - the immediate, *prima facie* meaning of a word or phrase. *Sussex*.

i. ALSO, creates zone of certainty, supports formal equality, neutral proxy for strict construction. *Sullivan*

ii. BUT, such analysis insufficient, particularly where ambiguous, competing meanings. Does not account for different context of speaker and audience. *Sullivan*

b. Mischief approach - identification of the remedy being addressed in legislation. *Heydon*.

i. ALSO, couches role of judges in interpreting law in democratic system. *Sullivan*

ii. BUT, such an analysis incomplete, difficult to determine.

c. Golden Rule - absent ambiguity, statute must be interpreted consistent with plain meaning of terms. Otherwise, coherence among provisions, avoid absurd. *McIntosh*{Init. Aggr.}(01)

i. BUT, insufficient analysis to interpret fully re: legis. intent. *Rizzo*{Terminated}(03)

d. Driedger's Modern Principle - in presence of ambiguity, statutory interpretation cannot be founded on the wording of the legislation, but must be read in entire context, harmoniously with scheme of Act, object of Act, and intention of Parliament. *Rizzo*{Terminated}(03)

i. ALSO, separate Driedger approach for each profound issue. Where issues overlap, do not have to rewrite, can refer to previous analysis. *Kodar*

ii. ALSO, primary approach applied by the Courts (always use). *Rizzo*{Terminated}(03)

*iii.*ALSO, ultimate purpose to determine legislative intent. *Rizzo*{Terminated}(03)

*iv.*ALSO, while Courts refer to 1983 2nd Ed., reformulated since by *Sullivan*.

v. ALSO, consists of combination of *literalist* (plain meaning), *purposive* (defect/remedy) and *intentionalist* (legislative purpose) approaches. *Sullivan*

2. Determine Ordinary/Grammatical Sense - determine what reasonable person of average understanding believe word to mean, w/in context of intended audience of legis. Presumes words not used in unusual/technical; legal words retain technical meaning. *Merk*{Whistle}(07)

a. Sources (not exhaustive, consider others in #8). Always look to def. within Act first.

i. *Legal Definitions* - most acts contain such definitions; can be stylistic, reduce repetition, or substantive (elucidate ambiguity), or rarely, unusual or artificial within context of act.

1. ALSO, legal definition can vary from other definitions. Where this occurs, legal definition is paramount (not determinative), *Riddell*{Smuggling}(12)*

2. ALSO, internal consistency should be considered - meaning of word should be consistent within Act absent contrary intention. *Learie*{Mushroom}

3. ALSO, can refer to other legis. for guidance, greatest weight when *in pari materia* (dealing with same subject) & from same legis. body. *IAC* s.15(2)(b)

4. BUT, legislatures can be deliberately vague when operating in new area of activity.

ii. *Statutory considerations* – interpretation must be consistent with IAs. If there is a definition in BCIA, this is paramount, absent contrary intention. *BCIA* s.12

iii.Audience - determine audience which law intended to affect; should be interp. in manner relevant to reasonable member of that audience. *Merk*{Whistle}(07)

1. ALSO, this involves testimony from expert witnesses, concerning what exactly the intended audience will believe a word to mean. *Learie* {Mushroom}*

2. BUT, if audience is the general public, expert testimony carries less weight; more likely to take common definition. *Merk*{Whistle}(07)

iv.Dictionaries - can be used, but of limited utility rarely produce a meaning which does not require further interpretation on the part of the court. *Shaklee*{Vitamins}(11)*

v. *Situation / reasonable person* - can determine ordinary meaning by imagining subject matter in ordinary situation; what reasonable person thinks. *Shaklee*{Vitamins}(11)*

b. Presumptions (not exhaustive, consider all others in #9)

i. *Ordinary meaning* - presumes legislation written for those subject to it, law drafted in accordance with rules of language in common use by audience. *Shaklee*{Vitamins}(11)*

1. BUT, enactments in area undertaken over time. Society progresses, governments in power change, as do individuals and needs of society. Presumption may fail.

ii. *Legislative framework* – part of Driedger's harmonious presumption, that statutes dealing with the same subject matter should have same meaning. *3000*{Airplane}(09)

iii.*Conjugation* – all conjugations relevant, but meaning of nouns can be different than verb forms of same word; (to disturb != to create a disturbance) *Lohnes*{Disturb}(15)

iv.Effectivity - legis. deemed well drafted, express *completely* legislature's intent. Cannot read in words, and each word must be given meaning. *McIntosh*{Init. Aggr.}(01)

1. ALSO, where meaning not explicit, must be interpreted. Sharpe{Porn} (05).

2. ALSO, interpretation must not reduce words to redundancy or mere *surplussage* *McDiarmid*{Lumber}(19)

3. ALSO, legislatures don't engage in *tautology*; every presented concept must be considered a discrete entity (eg. "vital" &"necessary" not same) *Merk*{Whistle}(07)

4. BUT, may be drafting errors in legislation; Courts must remedy these. Difference between poorly conceived (parl) and poorly drafted laws. *McIntosh* {Init. Aggr.}(01)

v. Uniformity of expression - words have same meaning throughout same statute, although this is presumptive and not determinative. {*Schwartz*}(20)

1. BUT, Where different words are used throughout a statute, they must similarly be presumed to have *different* meanings. {*Schwartz*}(20)

vi.Abundance of caution - draftsperson may have listed certain items to ensure that all situations are covered, or to highlight issues of particular import. Endorses ignoring redundancy in interpretation. Counterargument to the presumption against effectivity.

vii.Limited class rule - basket clause, holds that clauses take meaning from words that preceding, eg. train stations, airports, and other public places; using associated meaning, last clause limited to places linked to transportation. Requires common denominator among the preceding words. *Rascal*{Erection}(19)

viii.*Associated meaning* - word takes its meaning from the surrounding words, esp. if linked by and/or. Used to narrow the scope or meaning of a term that is potentially ambiguous or capable of bearing more than one relevant meaning. Should not be applied in such a manner so as to reduce words to mere surplussage. *McDiarmid*{Lumber}(19)

ix.*Implied exclusion* - express mention of one thing excludes all others by implication. Immensely powerful and ergo potentially dangerous principle. *{CASHamilton}*(19)*

1. BUT, does not apply where rebutted by abundance of caution. *{CASHamilton}*(19)*

2. BUT, does not apply where express reference appropriate in one context, unnecessary or inappropriate in another. *{CASHamilton}*(19)*

3. BUT, does not apply where context implies that the lack of deliberate *exclusion* implies intent to *include*. *{CASHamilton}*(19)*

c. Issues (not exhaustive, consider all others in #10)

i. *Sources* - no source determinative in finding ordinary meaning; decision lies with court, expert testimony, publications, and dictionaries useful. *Shaklee*{Vitamins}(11)*. Courts obliged to consider all such sources where admissible. *McIntosh* *dissent* {Init. Aggr.}(01)

ii. Ambiguity - meaning plain to one person may not be plain to others, relates to context of speaker/audience, cultural assumptions. Even dictionary definitions provide multiple meanings for many words, exhibiting general ambiguity and indeterminacy. *Sullivan*

iii. *Prima facie* - Meanings of words must evolve with society, first impression of word meaning should not be accepted w/o reflection. *Shaklee*{Vitamins}(11)*

iv. Artful text selection / Co-text - select which text to interpret, thus altering outcome of interp; re: amount of co-text; increasing co-text necessarily limits ultimate interp, so inclusion of more or less co-text will automatically affect outcome. *Sullivan*

v. Inherent meaning - text does not have a permanent, inhered meaning, but rather each reader infers own meaning via lens of personal context and understanding. *Sullivan*

vi. Exhaustiveness - lists denoted by *means* (exhaustive) vs. *includes* (inexhaustive). Inexhaustive lists include all enumerations plus the *ordinary meaning*. *Kodar*

vii. Bijural - Fed law must be able to have the same meaning, stand for the same thing in both common and civil jurisdiction.

1. *Authority* – s.8(1) of *Interpretation Act* (Fed), both equally authoritative, and in interpretation, reference made to rules, principles, concepts in force in province.

2. *Conflict* – s.8(2) of IA, in discrepancy between common and civil meanings, civil takes precedence in Quebec, common law takes precedence everywhere else.

viii. Language - two official versions of all Fed Acts, equally authentic, no primacy.

1. *Shared meaning* - if one meaning shared by both languages, and consistent with ambit of the statute, this meaning will be preferred. However, this must also be considered with a view to consistency re: legislative intent. *Medovarski*{Immig.}(16)

2. *Restricted interpretation* - if no shared meaning or this is inconsistent with ambit of statute, then narrower, more restrictive meaning is preferred. *3000*{Airplane}(09)

ix. Miscellany - "may" is discretional, while "shall" or "must" are obligatory. "Person" includes corporations.

3. Harmonious w/ Scheme of the Act - determination of whether benefits conferring or freedom restricting act in essence, via legisl. framework, internal coherence. *Merk*{Whistle}(07)

   a. Sources (not exhaustive, consider all others in #8)

      i. Esp. marginal notes, titles, purpose statements, preamble. Primarily intrinsic.

   b. *Statutory coherence* – role of legislation in government's project to regulate the subject matter; includes looking at other statutes *in pare materia* {*Ulybel*}(17).

      i. Incoherency occurs where application of one statute precludes other directly or absurdly. *Levis(City)*{Fraternite}(18). Two types:

         1. ALSO, *Horizontal coherence* – coherence between Acts enacted by the *same* legislature dealing with same subject. Presumed a consistent scheme absent contrary intention. Applies *a fortiori* to statutes *in pare materia.* {*Columbia River*} (17)*. Three presumptions:

            a. *Recency* - Later enactments prevail over an earlier enactment, as they reflect a more recent expression of legislative intent. *Levis(City)*{Fraternite}(18)

            b. *Specificity* - Specific enactments prevail over general enactments, as to favour the latter would be to render the former meaningless. *Levis(City)*{Fraternite}(18)

            c. *Intersection* - Earlier, specific enactments prevail over subsequent, general enactments, to favour latter would be to render former meaningless; must assume that legis. was aware of former when crafting legislation. *Levis(City)* {Fraternite}(18)

         2. ALSO, *Vertical coherence* – must be coherence between Acts enacted by *different* legislatures, where one is hierarchically above the other. Generally, Act should be read in such a manner so as to prefer the higher Act. Governed by three express rules:

            a. *Constitution* – all legislation must be interpreted in a manner so as to be consistent with the Charter and other components of the Constitution.

            b. *Subordinate* – all subordinate legislation must be consistent with enabling statute, except for where there is a clear contrary intention to the opposite effect.

            c. *Paramountcy* – Fed legislation is paramount over subordinate legislation. Human rights legislation if paramount over general legislation.

c. Presumptions (not exhaustive, consider all others in #9)

i. Strict construction - if restriction of freedom at stake, must adopt interpretation which favours accused, according with Locke's theory. *Merk*{Whistle}(07)

1. BUT, strict construction only applies to cases of *true ambiguity,* multiple plausible meanings accordant with context unresolved by legis. intent. *Hasselwander*{Uzi}(20)

2. BUT, strict const. may be outdated; crim law no longer draconian. Ergo, this is a subsidiary principle to *broad construction* in modern law. *Hasselwander*{Uzi}(20)

ii. *Broad construction* - acts presumed remedial, and therefore must be given sufficiently large and liberal construction to achieve goals, where benefits conferring. *BCIA* (s.8)

iii.*Internal consistency* - must attempt coherence among different parts of statute. Must be no repugnancy/inconsistency between portions/members of Act. {*Columbia River*}(17)*

d. Issues (not exhaustive, consider all others in #10)

i. Ambiguous - Some will be both benefits conferring and freedom restricting; in *Merk*, statute protects whistleblowers from termination, also prohibits and penalizes companies which violate. Must look at overall act to resolve. *Merk* Whistle}(07)

ii. Contrary intention - an obvious contrary intention in the legislation can override the rule of strict construction even in *Criminal Code* statutes. *Kodar*

4. <u>Harmonious w/ Object of the Act</u> - attempt to identify the wrong being addressed, and interpret the act so as to best achieve remedy. *Sharpe*{Porn}(05). *BCIA* (s.8)

a. Sources (not exhaustive, consider all others in #8)

i. Esp. marginal notes, titles, purpose statements, preamble, extrinsic factors.

b. Presumptions (not exhaustive, consider all others in #9)

c. Issues (not exhaustive, consider all others in #10)

i. Inference - legislatures are incorporeal bodies, so actual intention impossible to know; facts stop at what was *said*, therefore require interp. of extrinsic factors. *Sullivan*

ii. Temporality - seeking an intent relevant to an era which may be decades in the past, and no longer meaningful to a society which has progressed. *Sullivan*

iii.Abstract - diff. understandings of original meaning - abstract sense of term, connotation (imply) v. denotation (indicate - facts applied to) of text. *Sullivan*

5. Harmonious w/ Intent of legislature - findings above determine intent of legis., interp. should be consistent. Intent for interp. purposes consists of four elements, intent as: *expressed*, *implied*, *presumed* (imputed by Court absent first two, includes subseq.), *declared* (what Parl. says).

   a. Sources. (not exhaustive, consider all others in #8)

   b. Presumptions. (not exhaustive, consider all others in #9)

      i. *Incorporeality* - assumes intent of incorporeal leg. is knowable. *Sullivan*

   c. Issues. (not exhaustive, consider all others in #10)

      i. *Correction* - Courts must correct drafter's errors to align with intent of legis. However, errors of legis. itself not to be corrected (this would amount to amendment). *Sullivan*

6. OTHER FRAMEWORKS (if applicable).

   a. *Sullivan*

      i. *Purpose & consequences* - meaning of legislation must be understood with a view to the intention of the legislature, and the consequences of proposed interpretations.

      ii. *External aids* - all admissible extrinsic information must be used, where relevant indicators of legislative meaning. This is an obligation to the Court.

      iii. *Appropriateness* - interpretation must be appropriate, in that it must be *plausibly* compliant with text, *effectively* promote the legislative purpose, and create an *acceptable*, just outcome. Reject idea that where plain meaning impossible, that Courts free to exercise discretion.

      iv. *Acknowledgement* - must acknowledge extent of discretion in interpretation, mention use of special rules and presumptions in order to fulfill democratic & transparency goals. Judges must justify decisions to the community they serve, with view to legal norms.

   b. *Type of legislation* - the type of legislation being considered is the primary consideration in view of the scheme of the act.

      i. *Charter* - to be interpreted through analysis and purpose of the guarantees made, must be understood in light of the interests that they are meant to protect. *Wigglesworth* {Jprdy}(15)

         1. ALSO, Court cannot add or delete anything from legislation in order to make it inconsistent with the Charter. Inconsistency with the Charter means that the law is invalid. *Committee*{Political}(13)

2. ALSO, Where there are multiple interpretations available, preferred approach requires that the Court adopt the interpretation which does *not* conflict with the Charter, where available. *Committee*{Political}(13)

3. BUT, principle of interpreting legis. consistent with *Charter* only applies in occasions of actual ambiguity. To do otherwise would undermine intent of legis. - may intend to justify breach through s.1, for instance. *{BellExpressVu}*(20)

ii. Property rights - presumption that law which interferes with a person's property rights should be *strictly* construed in favour of the property owner.

1. ALSO, property cannot be confiscated by government without fair compensation, although this undermined somewhat by dealings re: resources.

2. BUT, property rights not constitutionally protected, so can be undermined through express terminology in legislation.

3. BUT, new tendency towards recognition of rights of all property owners and public in general to extent that it restricts the rights of individual owners. For instance, munic. can restrict extent to which property owners can make noise.

iii.Human rights - These acts are assumed to have a quasi-constitutional status, and therefore should be given a very *broad* interpretation. *Jubran*{HRCBC}(21)*

1. ALSO, purp. of HR law is not to punish discriminator (that is for the *CCC)* but to ensure that victims will be relieved/compensated. *Jubran*{HRCBC}(21)*

2. BUT, broad licence does not mean that the words of the Act should be ignored in order to prevent discrimination - some relationships will not be subject to scrutiny under the Act. *Jubran*{HRCBC}(21)*

iv.Taxation - Modern era, has taken on a *broad* and purposive approach, in line with those applicable to other statutes. {*Imperial Oil*}(22)

1. ALSO, refrain from jud. innov. except where this is desired *expressly* by legis. Role to elucidate ambiguity re: undefined words eg. *"income"*. *Ludco*{Tax}(21)

2. BUT, tax statutes often complex, balance multiple interests, ergo words of such acts must be carefully considered; should not deviate too far from ordinary meaning in pursuing *broad* approach. {*Imperial Oil*}(22)

3. BUT, taxpayers must be able to rely on tax statutes in order to arrange their affairs; ergo, ordinary meaning plays a dominant role where words are precise, and incapable of bearing multiple meanings. {*Imperial Oil*}(22)

4. BUT, historically, given a strict construction in view of the fact that they are empowered in order to part citizens from their property / money.

v. *Municipal* - Modern era reflects the need to ensure that there is sufficient flexibility in the powers afforded to municipalities to ensure that they are able to achieve their objectives; {*UTDFOSA*}(22)

1. ALSO previously, municipal powers were granted in specific matters; granted in more general terms, interp. must reflect this. {*UTDFOSA*}(22)

vi. *Professional body* - laws which create professional bodies must be *strictly* applied - anything not clearly prohibited can be done with impunity. *Laporte*{Doctor}(23)

1. ALSO, effectively create a monopoly; access to profession is controlled, and laws protect members in good standing from competition. Ergo, nature of benefit granted such that should be construed strictly. *Laporte*{Doctor}(23)

2. ALSO, strict construction must be permitted even where this interferes with the spirit of the legislation. {*Infomap*}(23)*

3. ALSO, broad construction leads to unreasonable consequences out of step w/ modern reality. *MacDonald*{K9Dent}(23)*

4. BUT, Court must be aware of consequences of a particular application before adopting; should not alter prevailing bus. or pro. practices. {*Infomap*}(23)*

5. BUT, Driedger preferable to strict construction; latter is a secondary principle, should be employed *only* where *true* ambiguity. *Bishop*{Vet}(23)

7. BREAKDOWNS

a. *Ambiguity* - where word capable of supporting multiple meanings. Can be syntactic, in which it is unclear which words are modified by a phrase, or contextual, based on assumptions re: audience
b. *Elliptical* - Omitting factors that are assumed to be taken for granted but are not always
c. *Improper Bivalence* - Assuming the issue is true/false when it could actually sit on a spectrum
d. *Over-Inclusiveness* - classification is too broad, unclear whether to apply rule as a result
e. *Under-Inclusiveness* - classification too narrow, fails to capture circ. relevant to aims
f. *Vagueness* - general terms are used assuming the audience will make them more specific
g. *Miscommunication* - communication breakdown could be due to error or mistake.

8. SOURCES

Intrinsic Sources

a. Construction - Courts must first analyze what law actually catches, and not base this on allegations of parties. Used in determinations of overbreadth. *Sharpe*{Porn}(05)

b. Legislative history - used in formation of self-defence in *Criminal Code* in *McIntosh* {Init. Aggr.}(01), advancement of legislation over time. *Merk*{Whistle}(16).

i. ALSO, presume that changes are substantive, but this is rebuttable by express/implicit intent. Must assume that departure from phrasing intentional. *SFU*{PropTax}(17)* Can be made for housekeeping or declaratory purposes; this is why there is no default presumption of substantive change via amendment. *BCIA* s.37(2).

1. ALSO, *explicit* intent via express wording (eg. in preamble), that amendment declaratory, can also use past&present tense ("means and has always meant").

2. ALSO, *implicit* intent, *declaratory* where (1) previous meaning was ambiguous, and (2) solution is one that courts could have arrived at without legislative intervention.

3. ALSO, can use sources other than *amendments*: (by weight, desc) briefing notes, alternate drafts, House Committee Reports, Hansard, and press releases {*Firearms}* (17)

4. BUT, subseq. amendments can't be used to determine original intention of the act, unless these occurred before facts; allows determ. viz. *greater certainty*. *BCIA* (s.37)

c. *Purpose statements* - in body of legislation, states principles / policies intended to be implemented, or objectives desired to achieve. Recent innovation. *Sullivan*

i. ALSO, after enacting clause, hold more weight than preambles because part of enacted law. Can't be contradicted, only interp. & applied by courts. *R. v. T. (V)* (SCC 1992)

ii. ALSO, limit discretion of powers auth'd, insist operation w/in framework. *CAIMAW* v. *Paccar of Canada* (SCC 1989)

iii. BUT, can be fractious, set out competing principles which need to be weighed. If not unified, less weight, esp. against other provisions in Act, resolve for latter. *R. v. T. (V)*

d. *Statute Title* - part of statute, legitimate for interp. Determine object of statute (prim.), purpose (limited by brevity), remove ambiguity of words. *BCIA* (s.9) *Lane*{Slots}(13)*

i. ALSO, modern statutes use short titles. Historically, provided long & short titles; however, only Fed. still does this. Both valid for interp. *Committee*{Political}(13)

ii. ALSO, can be used for *Charter* interpretation, deliberately included in law and useful to resolve ambiguity, although can't change clear meaning. *Wigglesworth*{Jprdy}(15)

1. ALSO, useful for *Charter* where difficult to resolve ambiguity, complex provision, homogeneity in section, specific (not generic) heading, other headings appear systematic, and strong rel. b/w heading and provision. *Wigglesworth*{Jprdy}(15)

iii. BUT, weight similar to preamble. Limited utility due to brevity. *Lane*{Slots}(13)*

e. *Preamble* - statement of object and/or purpose of statute. Not enactment or binding, unlike purpose statements. Rare PG, used by Fed. Groundwork for law. *{Inflation}*(14)

i. BUT, less weight than enacted stuff (prov., purp. state.) - similar to titles. Courts reluctant - can't give general words more weight than spec. provisions. *Roach*

ii. BUT, enactments not binding, stat. can fall short or overreach preamble. *Roach*

iii. BUT, may be political adverts; but, also place law in context to influence Courts in interpretation, eg. div. of powers; set out as national concern. *{Inflation}*(14)

f. *Schedules and appendices* - Located at end of document, house forms and admin details which would otherwise clutter up statute. Part of statute, employed for SI purposes validly.

i. ALSO, can form part of the statute to which they are appended; this is case if incorporated into operation of Act, left as Schedules only for convenience in reading and understanding legislation. *Waddell*{Pipe}(30)

1. ALSO, for instance, if Act states that rights or obligations created by the Act are subject to terms and conditions in Schedule attached to that Act, implies that the schedule is incorporated into the Act. *Waddell*{Pipe}(30)

ii. BUT, less weight than text in circ. of conflict between schedule and text {*Houdde}*

g. Marginal notes - used in *McIntosh*, intent of legislation was to extend stricter defence only to those who were not initial aggressors. *McIntosh*{Init. Aggr.}(01)

i. BUT, not part of text, and can only be afforded limited weight. It was not intent of legis. to enact law through notes added by others, not democratic.

ii. BUT, be wary of unofficial pubs. printing marg. notes as headers. *Basaraba*{Union}(15)

iii. BUT, can't be used in *Charter* interp. not part of legis. act. *Wigglesworth*{Jprdy}(15)

Extrinsic Sources

h. Context - Must consider condition of things existent at time of enactment; part of understanding the legislative intent. More weight than others. *3000*{Airplane}(09)

i. BUT, this can change over time; if expressed in present tense, law must be applied to circumstances as they arise at *time of reading*, not enactment. *BCIA* (s.7(2))

i. Public policy - academia, jurisprudence and legislation from other jurisdictions, should be considered to determine intent of legislature. *Merk*{Whistle}(07)

i. ALSO, should be afforded more weight when dealing with issues of great import, eg. protecting children vs. free speech. *Sharpe*{Porn}(05)

ii. BUT, such policies may not match parliamentary intent, may be relevant to other jurisdictions but not the current one.

j. Jurisprudence - other decisions at common law involving interpretations. strong source of authority, arguably binding or determinative in view of *stare decisis*. Where not binding, the weight accorded is moderated by the date of the case, the jurisdiction, etc.

i. BUT, must ensure that these decisions dealt with same version of act. *Rizzo.*

k. Hansard - debate, statements by Ministers, prominent in *Rizzo* where Minister said that protections extended to bankruptcy circumstances. *Rizzo*{Terminated}(03)

i. BUT, only what was *said*, not actual intention of legis. Ergo, of limited weight. *Sullivan*

*l. Administrative interpretation*s - includes the decisions of admin tribunals (ie. OHRT) and civil servants / ministers. Often given considerable weight when the interpretation falls within the area of expertise granted to the tribunal / ministry.

i. BUT, these are mere opinions, however, ergo just instructive - not determinative.

m. Textbooks - scholarly treatises, texts, and other literature guide SI, non-determinative. Carry substantial weight where author considered a prominent authority (eg. Hogg in Con law).

n. International law - important, reveals nature of interests, needs and rights relevant to matter. Not binding, not CDN law, but can be considered. *Baker*{Convention}(27)

9. PRESUMPTIONS - each step of Driedger approach should take into account presumptions below. These presumptions can be rebutted w/ evidence. *Sharpe*{Porn}(05)

d. *Absurdity / illogical* - legislators have right to draft absurd laws. Ambiguity is lack of clarity, absurdity is illogical outcome; amb. purview of courts, abs. not. *McIntosh*{Init. Aggr.}(01)

iv. BUT, legislature doesn't attempt to produce absurdity, but desirable outcomes; cannot be unreasonable, incompatible, render futile the ambit of legis. *Rizzo*{Terminated}(03)

v. BUT, *irrational distinction* should not be made as a result, where those deserving of worse treatment receive better treatment and vice versa. *Merk*{Whistle}(07)

e. *Harmony - Driedger* approach presumes that statutes dealing with the same subject matter will be harmonious, between Acts, etc. *3000*{Airplane}(09)

f. Overbroad - laws shouldn't catch more than required. Courts must first analyze what law actually catches, and not base this on allegations of parties. *Sharpe*{Porn}(05)

g. Practicality - empowering legislation should not rest on impossible premises, eg. cannot always factually establish intent of offender. Must be pragmatic. *Sharpe*{Porn}(05)

h. *Consistency* - Approach for interpretation must lead to a consistent meaning for the law; objective standard can aid with this task. *Sharpe*{Porn}(05)

i. *Plausibility* - interpretation should not generate a meaning which is the text is not capable of bearing in the ordinary sense. *McIntosh*{Init. Aggr.}(01)

j. Crown Immunity - it is presumed that Fed legislation does not apply to the Crown or its agents, except for where there is express contrary intention (eg. the *Charter*).

iv. BUT, in BC, s.14(1) of the BCIA, Acts are presumed to apply to the BC government unless there is express contrary intention which indicates that they should not apply to the provincial government. This is rare for PGs, most follow Fed model.

k. Common law – legislation which undermines or contravenes the common law can only do so through express words. Explicit and declarative, never implicit. *Jaagusta*{Search}(16)*

l. Punctuation - pay little, attention to punctuation. Critical matter in statutory interpretation is intent of legis., shouldn't be undermined by mere drafting error. *{Popoff}*(16)*

m. Territorial application – Acts presumed restricted to boundaries of jurisdiction. Also, Act applies to entire jurisdiction.

n. Extraterritorial application - only Fed has jurisdiction to enact extra-territorial law. Any PG law which has extra-territorial application is UV. Presumption against extra-territorial

effect; overcome by contrary intention, or *real and substantial link* b/w offence and Canada

o. Individual rights - must presume that legis does not wish to adversely affect individual rights; must select interpretation which does least harm to individual rights (eg. strict construction).

i. ALSO, Includes a variety of more specific ideas; personal liberty, freedom of commerce, access to the courts, right of natural justice, among others.

10. INTERPRETATION ACT - each step of Driedger approach should take into account interpretation concepts below. Can be rebutted w/ evidence, (eg. via contrary intention).

d. *Tense* - always "always speaking" *BCIA* (s.7(1)) In present tense, law applies to circ. as they arise - interpreted meaning at time of reading, *not* time of enactment (eg. 1840 weapons law could not foresee laser guns, but intent is public safety, ergo satisfied). *BCIA* (s.7(2))

e. *Broad construction* - acts presumed remedial, and therefore must be given sufficiently large and liberal construction to achieve goals, where benefits conferring. *BCIA* (s.8)

f. *Singularity / plurality* - Convention holds that statutes will be singular; however, depending on context, singular may include the plural and vice versa. *BCIA* (s.28(3))

g. *Definitions* - where in legislation, defs. will apply to entire statute and all regulations made under authority of statute, unless there is an express *contrary intention*. *BCIA* (s.12)

h. *Alternate grammar forms* - Statutory definition of a word applies to all grammar forms; so, for instance, pollute applies to polluter, pollution, etc. *BCIA* (s.28(4))

i. *Gender* - current convention is to use gender neutral terms where possible. Gender specific terms include both genders, as well as corporations. *BCIA* (s.28(2))

j. *Referential incorporation* - secondary statute pulled into primary. Useful if legislature wants procedures in primary to be identical. Where changes occur in secondary, if *amended* or *repealed & replaced*, considered *ambulatory*, and will apply to primary; if repealed but not replaced, *not* ambulatory, original definition continues to apply. *BCIA* (s.44).

iv. BUT, beware contrary intention (eg. if specific version or year of reference is provided) implies that a specific version applies. See *mutatis mutandis*, *BCIA* (s.44).

k. *Powers* - legislation sets out ancillary powers that may be exercised by public officers under a statute; there are related powers for one authorized to appoint public officers; also powers of delegation (except reg. power) where authorized to "do something". *BCIA* (s.22, s.23)

l. *Time - General rule*, the first day is excluded, and the last day is included. *BCIA* (s.25(5)) *Exception*, first and last days are excluded, triggered by "magic words" in legislation('clear',

'at least', & 'not less than') *BCIA* (s.25(4)).

m. *Holidays* - Includes Sundays; not usually excluded when calculating time, unless there is a reason for doing so (either in argument, or in legislation). *BCIA* (s.29) Where expiration date falls on holiday, deadline moves to next day which isn't a holiday. *BCIA* (s.25(3))

n. *Age* - reaches age in years at start of relevant anniversary of date of birth. *BCIA* (s.25(8))

TEMPORAL ANALYSIS OF LEGISLATION

1. PROCEDURE

a. *Legislative temporality* - establish coming into force date of provision; determine whether this legislation has been designed to apply retroactively, retrospectively, etc. Determine type of relevant legislative change.

i. Review *General Principles* concerning commencement/coming into force; #2

ii. Review *Legislative Changes* to determine type of change applicable; #3

iii. Review *Types of Application* to determine type of application applicable; #4

b. *Fact timeline* - identify facts and conditions that comprise the situation; establish what actually happened, situate all facts in time;

c. *Fact completion* - determine whether facts where complete, ongoing, or had begun when provision came into force.

d. *Right identification* - determine whether applying the provision to facts would interfere with vested rights. #5

i. Is there such a right?

ii. Is it vested or accrued?

iii. Has it been impinged upon?

e. *Presumptions* - if application is retroactive, retrospective, or interferes w/ vested rights, determine whether the presumption against these have been rebutted.

i. Review all relevant *Presumptions*. #6

f. *Policy* - analysis of policy will largely determine the outcome of temporal analysis; will this produce an undue or onerous outcome, such as causing an insurance fund to be underfunded? Past actors do not have the ability to change their conduct in order to avoid the outcome, and therefore this will weigh against retro-application. {*Dikranian*}(24)

2. GENERAL PRINCIPLES

a. *Enactment vs. commencement* - enactment is the date of completion of the legislative process culminating in Royal Assent by the GG / LG. Commencement is the date on which the law comes into force.

iv. ALSO, presumed to coincide absent express contrary intention. *BCIA* s.3(2)

v. ALSO, where enact/commence do not coincide, immune to challenge from basis that act is not yet in force. *BCIA* s.5

vi. BUT, contrary intent common in modern law; allows govn't time re: logistics of Act.

b. *Time of day* - enactments commence on the beginning of the day in which they come into force, expire at the end of the day specified or are repealed. *BCIA* s.4(2)

c. *Expiration* - expire when no longer of practical significance, generally due to passage of time; deemed repealed when lapsed or cease to have effect. *BCIA* s.4(4).

d. *Operation vs. application* - operation is the period in which a law is active, legally effective (the period between commencement and expiry) while application is the time period of events to which the law will apply (eg. if retroactive, could predate commencement).

e. *Unit of analysis* - the appropriate unit of analysis for temporal analysis of law is the provision; statutes and regulations as a whole will contain many different relevant dates, as they will be the result of different amendments, repeals, expiry dates, commencements, etc.

3. LEGISLATIVE CHANGES

b. *Amendment* - alteration of language, addition of new text. While common sense would suggest that legis. intended to change *meaning* of statute, this is rebuttable by express/implicit intent. Must assume that departure from phrasing intentional. *SFU*{PropTax}(17)*

ii. ALSO, can be made for housekeeping or declaratory purposes; this is why there is no default presumption of substantive change via amendment *BCIA* s.37(2).

iii. ALSO, *explicit* intent via express wording (eg. in preamble), that amendment declaratory, can also use past&present tense ("means and has always meant").

iv. ALSO, *implicit* intent, *declaratory* where (1) previous meaning was ambiguous, and (2) solution is one that courts could have arrived at without legislative intervention.

c. *Repeal* - law ceases to have force when repealed by an act of the legislature. *BCIA* s.35

ii. ALSO, *no revival* - absent express contrary intention, repealing the law does not revive the law (common or statutory) which existed prior to the enactment. *BCIA* s.35(1)(a).

iii. BUT, *no challenge* - the repeal of enactment does not mean that one can challenge a lawful action that was taken under the statute while it was in force. *BCIA* s.35(1)(b).

iv. BUT, *prosecution* - repeal does not undermine prosecution for acts committed prior to the repeal, although if act no longer illicit, will usually not proceed. *BCIA* s.35(1)(d).

v. BUT, *accruing rights* - the repeal of an enactment does not affect rights/obligations required, accrued, accruing, or incurred under the repealed enactment. *BCIA* s.35(1)(c).

vi. BUT, *vested rights* - doesn't interfere w/ investigations, proceedings, or remedies relating to vested rights re: statute; can still initiate, continue. *BCIA* s.35(1)(e), s.35(2)

d. *Repeal & replacement* - existing law or act is repealed and immediately replaced through act of legislature. *BCIA* s.36

ii. ALSO, *personnel* - those appointed under this enactment serve as if appointed under new enactment. *BCIA* s.36(1)(a).

iii. ALSO, *proceedings* - ongoing *proceedings* initiated under former enactment continue as if initiated under *new* enactment. *BCIA* s.36(1)(b).

iv. ALSO, *mitigation of penalties* - if effect of new act reduces penalty, the accused gets benefit of reduced penalty (in accordance with s.11 of the *Charter*). *BCIA* s.36(1)(d).

v. ALSO, *referential incorporation*; when parent Act is r&r'd, new Act is incorporated in its stead. *BCIA* s.36(1)(f).

2. BUT, this will not occur where new Act doesn't deal w/ subject; in that case, the old act will "*survive*" until legislation deems otherwise. *BCIA* s.36(1)(f).

vi. BUT, *accrued rights* - procedures in new enactment to be followed with a view to rights accrued under former enactment insofar as possible. *BCIA* s.36(1)(c)

vii. BUT, *regulations* - regs. under old act will be considered to remain in force unless they are in consistent with new Act, until they are replaced or repealed. *BCIA* s.36(1)(e).

4. <u>TYPES OF APPLICATION</u>

b. *Retroactive application* - changes way which law deals with *concluded* matters. Operates into the past. Operates backwards. Changes the *past* effects of a *past* event. *MacKenzie*{Pension} (25)*

c. *Retrospective application* - changes way in which the law deals with matters that may already have taken place, but have not yet been dealt with legally. Operates forwards, but looks backwards to preexisting facts. *MacKenzie*{Pension}(25)*

d. *Immediate application* - attaches *future* legal effects to an *ongoing* situation - an incomplete series of events. Old law may "survive" in proceedings that began before law changed (*postponement*), or proceedings may be changed in order to accord with new law

(*immediacy*). Taken from civil law terminology (*Bellechasse Hospital Corp v. Pilotte*).

e. *Prospective application* - No presumption against immediacy, other than the presumption against interference via vested rights.

5. RIGHTS, VESTED, ACCRUED, ACCRUING; DUTIES INCURRED - regardless of whether a statute is retroactive/prospective, etc., must consider whether the application of that statute would result in interference with vested/accrued rights.

   a. ALSO, *analysis* – involves a three step analysis to determine whether there's a vested right:

      i. *What kind of right* are we discussing? Is the right already acquired? Will it inevitably be acquired, or is it merely probable or possible that the right will be acquired?

         1. ALSO, must be tangible and concrete, not general and abstract.

      ii. *When can it be said that the right is accruing or accrued?* Of particular importance. critical to a determination of whether right was accruing before statutory change.

         1. ALSO, must have been sufficiently constituted at the time of the force of the new statute (already acquired or *inevitable*). {*Dikranian*}(24)

      iii. *Is there a contrary intention?* If so, does this apply to both concrete (vested/accrued) rights, or only to abstract (accruing) rights?

   b. ALSO, interference with such rights consists of diminishing or doing away with a protected common law or statutory interest. Also includes obligations (incurred rather than acquired. *BCIA* s.35

   c. ALSO, differentiates between mere rights and *vested* rights, although it is presumed that the legislature does not wish to do either. Rights exist both as abstractions (potentialities) and in concrete form - vested (interests or expectations actually held).

   d. ALSO, mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists; further, the situation must also have materialized. {*Dikranian*}(24) Or, must have been *substantially certain* / *inevitable*. *Scott*{DrDisgrace}(25)*

   e. BUT, accruing has been interpreted very narrowly. Accruing rights and obligations are those which will inevitably accrue, and not those which will potentially accrue. Probably, possibly, potentially - not sufficient for accruing. *Scott*{DrDisgrace}(25)*

6. PRESUMPTIONS - onus is on the claimant to demonstrate that the legislation in question was intended to apply retroactively / retrospectively. *MacKenzie*{Pension}(25)*

a. *Charter* - cannot be applied either retroactively or retrospectively. However, this is a flexible tool, weighed in each case re: factual and legal context of right at issue. *Benner*{Crystal}(23)

   i. ALSO, must avoid all or nothing approach which artificially divides events into pre and post *Charter*. Some *Charter* rights deal with discrete events, while others deal with ongoing conditions, and in the latter, there should not be a presumption against retro. In the former, this is acceptable, however (discrete acts - no retro) Benner{Crystal}(23)

   ii. ALSO, Rights do not crystallize at birth; represent a continuing or ongoing situation; therefore, *Charter* protections apply to those born before 1982. Benner{Crystal}(23)

b. *Transitional provisions* - there are few constitutional constraints (dealing mostly with criminal offences) against retroactive/retrospective legislation. Subject to these restraints, legis can enact whatever transitional provisions it requires to achieve its ends.

c. *Retroactivity* - *strong* presumption *against* retroactive application. V. objectionable - deem past consequences of past actions to be different than what they were. {*Gustavson*}(24)

   i. ALSO, *rule of law* most important - law must be stable and comprehensible to the public in order to effectively govern society, allow people to abide.

   ii. ALSO, *fairness* also important, unfair to change a law after people have relied on it to their ultimate detriment.

   iii. ALSO, consistency with the scheme/object of the Act is a necessary component of rebutting the presumption against retroactive application. *MacKenzie*{Pension}(25)*

   iv. ALSO, if there is any doubt concerning intention of legislature, then statutes should not be given a retroactive application. *MacKenzie*{Pension}(25)*

   v. BUT, *possible* to rebut; in fiscal legislation, where there is notice to taxpayers so that they can arrange their affairs to avoid the impact, for instance.

d. *Retrospectivity* - presumption *against* retrospective application. Do not purport to change the past, although still objectionable because changes outcome of actions which can no longer be changed or avoided by the actor.

   i. ALSO, If any doubt concerning intention of legis., then statutes should not be given a retrospective application which interferes w/ vested rights. *MacKenzie*{Pension}(25)*

   ii. BUT, *rebuttable* in three circumstances:

      1. *Beneficial legislation* - if legislation confers benefit to others without prejudice to others, there is little to object to. Even if the beneficial legislation has government cost, this is assumed to be acceptable, because government deliberately assumed

those costs in enacting legislation thusly.

2. *Legislation designed to protect public* - primarily, disqualifications to persons who have run afoul of the law (eg. preventing people with fraud convictions from becoming accountants). This would not be considered retrospective, as it is designed to protect the public.

3. *Procedural legislation* - does not affect substantive rights in any way, but sets out modalities for enforcement of rights/prohibitions/obligations. Applies immediately, except for where it can be shown that there is a substantive effect of the change on the position of the parties in a dispute.

    a. ALSO, the right to appeal has been interpreted as *substantive*, and not merely procedural. *Puskas*{Appeal}(26)

e. *Vested / accrued / rights / incurred obligations* - presumption *against* interference with these entities absent a contrary intention express in legislature. Rebuttable. {*Gustavson*}(24)

i. ALSO, *statutory presumption* - involves certain legal rights - is there an accrued or accruing statutory right (interest or expectation that the law will protect) which is interfered with by the new legislation? If so, law cannot apply. *BCIA* 35(1)(c)

    1. ALSO, even where there is explicit intention to interfere with abstract rights, this does not extend to vested, concrete rights absent further expression to this end.

ii. ALSO, *common law* rights (ie. property rights, contract rights). Vested rights are favoured over legislation, rebuttable presumption against this (w/o contrary expression).

    1. BUT, this is weaker than the statutory presumption; easily rebutted. Will only hold where there is an ambiguity in the legislation.

iii. BUT, *no right in state of law* - all changes in legislation alter antecedent rights; no one has a vested right in continuance of previous law itself. {*Gustavson*}(24)

iv. BUT, *rebuttal* - presumption against interfering with vested rights more fluid, easier to displace than the presumption against retroactivity or retrospectivity. Does not require express intent, can be implied from intention of legis. on consideration of all facts.

    1. ALSO, *balance* - involves balancing the degree of unfairness, importance of policies at hand, impact of limiting or delaying application of legislation, as well as evidence of legislative intent (*Canada (AG) v. Lavery* (BCCA 1991))

    2. ALSO, *fairness* - can be rebutted where does not upset expectations to great extent, not shockingly unfair, and there is evidence that the legislation should be interpreted remedially (*National Trust Co. v. Larsen* (SKCA 1989)).

SUBORDINATE LEGISLATION

1. DEFINITION - Also called delegated legislation, includes regulations, by-laws, rules, forms, tariffs, letters patent, commission, warrant, by law, orders, and proclamations which are enacted in accordance with powers granted by statute or by Cabinet / LGG in council. *BCIA* s.1

    a. ALSO, *delegation of power* occurs where a legislative body distributes responsibility for defining and carrying out a legal initiative to a subordinate body through statute. *Hodge v. R.* (ONPC 1883)

    b. ALSO, includes instrument or rule set out by the LG in Council (eg. Cabinet)

    c. BUT, does not include court orders, orders made by administrative tribunals or public officers.

    d. BUT, important issues should be dealt with in Act, not regulation, so that legis. have a chance to consider and debate matters. Certain powers cannot be drafted via regulation, including those which involve penalties for serious offences, affecting rights and freedoms.

2. INTERPRETATION APPROACH - all of the tools applicable to the interpretation of statutes can also be used to interpret legislation subordinate to statute (Driedger, Interpretation Acts, etc.). Regulations rarely found invalid, as grants of power tend to be broad. *Guzman* {Pinay}()

    a. *Nature of enabling act* - determine the nature of the enabling Act; is it framework legislation (broad, general powers conferred), or rather does the enabling legislation on its own constitute a complex and comprehensive attempt to manage the subject matter? *Guzman*{Pinay}()

        i. ALSO, is the Act *concise*? Does it deal with complex, wide-reaching subject matter in a broad, high-level sense? Does the Act leave crucial details to subordinate legis? Does subject require fast response to social developments? *Guzman*{Pinay}()

            1. If so, framework; big discretion in subordinate regs. If not, comprehensive, lesser subordinate discretion. *Guzman*{Pinay}()

    b. *Nature of enabling clause* - determine the nature of the enabling clause; whether there are significant or, alternately, relatively minor limits concerning enactment of subordinate legislation. *Guzman*{Pinay}()

        i. ALSO, if there are only minor limits, framework; big discretion in subordinate regs. If considerable limits, comprehensive, lesser subordinate discretion.

        ii. ALSO, regulatory power can be delegated expressly, or by necessary implication.

1. BUT, not applicable to *KH8* clauses: power to enact legislation which interferes with or alters enabling Act can't be delegated by implication, only explicitly. *FAPGBC*{Gain}(28)

iii. ALSO, consider conflict in view of *Interpretation Act:*

1. *General expansion* - If Act empowers a body to make regulations, should be necessary, advisable, ancillary, consistent; deal w/ administrative and procedural matters; *BCIA* s.41

2. *Specific expansion* - can limit time, place, assign fees, create offences, penalties, unless contrary intention expressed in enabling act. *BCIA* s.41

3. *Force of law* Regulations have the force of law. *BCIA* s.42;

c. *Nature of impinging regulation* - determine the nature of the impinging regulation itself. Is it a regulation, or a policy directive? If a regulation, consider the regulatory framework from section below.

d. *Nature of conflict* - determine the nature of the conflict, if any, between the regulation and its enabling Act. Generally, will only invalidate regulations where there is an express conflict. *Guzman*{Pinay}()

i. ALSO, *ultra vires* - provision of four grounds (not exhaustive) under which subordinate legislation can be considered UV its enabling Act: *FAPGBC*{Gain}(28)

1. *LG-in-Council* - where appropriate, regs. must be within the powers of the LG delegated by the enabling Act. *FAPGBC*{Gain}(28)

2. *Statutory purpose* - regs. must be consistent with the statutory purpose of the enabling Act. *FAPGBC*{Gain}(28)

3. *Authorization* - regs. must not be discriminatory (although this is more of a Charter issue), and further must be authorized by enabling act. *FAPGBC*{Gain}(28)

4. *Repugnancy* - regs. must not be repugnant to the provisions of other PG legislation (eg. Human Rights Act). *FAPGBC*{Gain}(28)

ii. ALSO, will not invalidate regulation merely on basis of merits or wisdom of legislation.

iii. ALSO, will not invalidate regs. merely on basis that it takes into consideration both relevant and irrelevant factors.

3. REGULATIONS - refers to all instruments arising out of regulation-making power of an authority, ergo synonymous with delegated or subordinate legislation. *Dussault*

   a. ALSO, in order to enact subordinate legislation, there must be statutory authority for doing so. Otherwise violates legislature's exclusive right to enact, ergo *UV*. *Dussault*

   b. ALSO, authority given in enabling clauses "...may make regulations" - in modern legislation, usually involves specific, rather than broad regulating powers.

   c. ALSO, interpretation acts and other rules of interpretation apply to regulation as they would for legislation; see BCIA for others.

      i. *Definition of regulation* - provided in s.1 (*BCIA)*; must involve *magic words*, "regulation" or "prescribe(s)(d)"

      ii. *Definitions w/in regulation* - same meaning as in enabling Act. s.13 (*BCIA)*

      iii. *Force* - has the same force of law as enabling enactment. s.41(2) (*BCIA)*

      iv. *Survival* - same conditions concerning repeal/survival. s.36(1)(e) (*BCIA)*

      v. *Scope* – expands *generally* allowing any regulations which are necessary and advisable, *specifically* by allowing for particularity re: admin/procedural matters, temporality / geographic limitations, fees, offences, penalties. s.41(1), s.5, s.23(5), s.27(4) (*BCIA)*

   d. ALSO, can take various forms:

      i. *Regulation* - particular type of subordinate instrument with a wide scope, affecting a large number of persons. *Dussault*

      ii. *Orders* - more limited scope than regulations, affecting fewer of people. *Dussault*

      iii. *Decrees* – used only in Quebec, specific in nature, define the working conditions applicable to employers and employees. *Dussault*

      iv. *Rules* – apply to procedure in courts or tribunals, such as the process followed in law suits, appeals, or administrative tribunals. *Dussault*

      v. *Tariffs* - quantitative, numerical norms used to regulate fields of economic activities, such as the duties payable for importing goods. *Dussault*

      vi. *By-laws* – rules or norms adopted by corporations to provide a framework to members, govern affairs, most often by municipal corporations. *Dussault*

vii. *Letters patent* - instrument which can be used by an authority to create a corporation, authorize that corporation to engage in particular activities. *Dussault*

4. DIRECTIVES / POLICY - instruments of an administrative nature - used to guide civil servants and other officials in exercising their authority. Not binding. *Dussault*

   a. ALSO, the fact that a body could also deal with matters via binding legislation doesn't preclude use of directives instead. {*Capital Cities Communications*} Must respect legislative intent vis a vis keeping situation outside of the framework of law. *Dussault*

   b. ALSO, authorities obligated to apply directives and policies in good faith; should not be applied arbitrarily/automatically. {*Capital Cities Communications*}

   c. ALSO, include circulars, guides, guidelines, manuals, instructions, rules of interpretation, and policies. *Dussault*

   d. ALSO, not directed at the public at large, but rather at civil servants who apply the law, employ discretion, and make decisions. *Dussault*

   e. ALSO, authority to make directives is not usually explicit, but implicit. Generally derived from terms which grant control over Department or Agency. *Oldman*{River}

   f. ALSO, fulfill three roles: (1) uniformity in activity by employees; (2) uniformity in interpretation/application of law by employees; (3) transparency of decisions. {*Capital Cities Communications*}

   g. BUT, are not legislative, but administrative: *no force of law*. Courts generally will not interfere with drafting and application of directives, not judicially enforceable. *Oldman* {River}

   h. BUT, where there is a conflict with relevant regulations, regulations would by necessity prevail over directives/guidelines. {*Capital Cities Communications*}

   i. BUT, even where longstanding practice gives directives a pseudo-legal status, this will not be enforced by the courts. *Pezim v. British Columbia* (SCC 1994).

   j. BUT, reliance on directives does not give any entitlements to those reliant on them. *Pezim*

POLICY CONCERNS

1. Increasing scope - subordinate legis. major source of law and governance, has surpassed primary legis. in terms of quantitative amounts, although passed under unstructured grants of discretion. *Mullan*

a. ALSO, *time* - legis. no longer has enough resources to be responsible for all law in complex democracy. This would also delay legislation considerably. *Mullan*

b. ALSO, *accessibility* - putting all requirements into primary legis. makes it less accessible, comprehensible by the public it is intended to regulate. *Mullan*

c. BUT, *executive* - this has the effect of diminution of legislative power, trenching power in the executive branch; particular problem when executive also controls legis. *Mullan*

i. ALSO, *King Henry VIII* - clause which allows subordinate legislation to be passed even where this overrides, exceeds, or repeals the terms of primary legislation. Means that there is potential for executive to completely undermine legislative branch. *Mullan*

ii. ALSO, *commonplace* - previously only justifiable under war or other emergencies, has now become commonplace. Details and principles subject to whim of executive. *Mullan*

iii. ALSO, *minimize* the role of the legislature. Now simply gateway to control of executive, sometimes question mismanagement during question period. *Mullan*

2. *Oversight* - there are means for oversight of subordinate legislation at several levels.

a. *Regulations Act* - subordinate legis. subject to procedural reqs. in *RA*. Only applies to legis. which falls within definition of *regulation* in s.1 of the *BCIA*. Attempts to catch inconsistencies and simple problems, while giving public notice/access to regs.

i. ALSO, *examination* - reg. scrutinized by person designated by relevant minister, usually *legislative counsel*. Must check for compatibility with authorized power, drafting errors. *RA* s.2

ii. ALSO, *deposition* - reg deposited with *Registrar of Regulations*, entered into public registry which allows citizens to access regs. Also checks for procedural compliance. Otherwise, must be available during reg. office hours. Minister can deem, if in public interest, that regulation was deposited/published. Other than those which create offences, regs. come into power once so deposited. *RA* s.3, s.4

iii. ALSO, *publication* - *Registrar* must publish all regs. in *Gazette* unless there is a specific exemption in the Act. Otherwise, must be available during reg. office hours. Minister can deem, if in public interest, that regulation was deposited/published. If exempted, notice will be published instead, incl. how citizens can access regs. Regs. which create offences only come into effect after the date of publication. *RA* s.5, s.6, s.7.

b. Legislative scrutiny - not common in Canada. There are certain instruments built in to certain types of laws for such scrutiny, eg. *Canadian Bill of Rights* requires Minister of Justice to review legislation for consistency with that document. *Mullan*

i. ALSO, some provinces and Acts create committees for evaluating such legislation, although this is restricted to the form, and not the wisdom or merit of legislation. *Mullan*

ii. ALSO, the Fed established *Standing Joint Senate/Commons Committee for Scrutiny of Regulations*; appeared to have power and resources required, effective until partisan politics undermined it. *Mullan*

iii. BUT, issue is that committees can be hijacked by the executive in order to serve legislative purpose of government; undermines oversight purpose. *Mullan*

iv. BUT, limited to access by politicians, members of the executive, and therefore are not relevant to the public affected by the regulations. *Mullan*

c. Public consultation – common in the US, less so in Canada, amounts to advance notice of regulations, opportunity for public to comment on these proposals. *Mullan*

i. ALSO, only Quebec has general legislation concerning this practice. However, this is now incorporated into high profile regulatory regimes, and common in individual Fed Acts. *Mullan*

ii. ALSO, such procedures are broadly democratic, open to use by all, not subject to the manipulation or appropriation common to legislative scrutiny committees. *Mullan*

iii. BUT, process should probably be formalized, requires enactment of generally applicable legislation, rather than clauses in individual acts, to reflect increasing scope.

d. Judicial oversight - judicial review of subordinate legislation arising through the Court system. Comes in two forms:

i. Limitations of enabling clause - all subordinate legislation must be authorized by, consistent with enabling statute, otherwise will be considered *UV*.

1. ALSO, *specificity of language* - critical factor. can be expressed generally ("make guidelines") or specifically, with this determining extent of power granted.

a. ALSO, *broadly expressed* enabling provision invokes statutory interpretation, involving both regulation under challenge and relevant parts of parent Act.

ii. Constitutional grounds - three types of Constitutional challenge to subordinate legislation:

1. Division of powers - if enabling Act is *UV* the enacting legislature, or the subordinate legislation is *UV* the enacting legislature (or enabling Act), invalid.

2. *Charter* / s.35 - must conform with protections in the *Charter*, or else be demonstrably justifiable under s.1. Must also respect Aboriginal rights re: s.35 CA.

3. *Implied Constitutional limitations / KH8* - must not infringe on parliamentary supremacy; responsible government requires that exec accountable to legislature. *KH8* clauses undermine this system.

    a. ALSO, *Donoughmore* holds that where there is a *KH8* clause, can be presumed that legislature deliberately conferred powers to executive, and further had knowledge of nature and consequences of its actions. *Waddell*{Pipe}(30)

        i. BUT, *Donoughmore* also holds this does not mean that *KH8* is consistent with principles of parliamentary government; subordinate should not be able to alter legislation passed by the primary legislator. *Waddell*{Pipe}(30)

    b. ALSO, *Donoughmore,* two limitations to *KH8* - *(1) purposive* - should never be used except for purpose of bringing an Act into operation. (2) *limited* - should be subject to a limit of one year from passage of enabling Act. *Waddell*{Pipe}(30)

        i. BUT, *McRuer* holds *KH8* should not be adopted in Ontario, with smaller body of legislation and less complicated legis. than UK. *Waddell*{Pipe}(30)

            1. BUT, development of society within purview of both PG and Fed legislatures implies that society now more complex, perhaps clauses now desirable in accordance with *McRuer* criteria.

    c. BUT, *KH8* clauses do not constitute an abdication of legislative authority, as legislature could repeal enabling Act and subordinate legislation at any time. *Gray*{WWI}(29)

        i. BUT, the decision in this case occurred in the context of war, and so it remains to be seen whether the matter will be treated similarly during peacetime. *Gray*{WWI}(29)

            1. BUT, Constitutional; perhaps it ought not to be used, but irrelevant. Not limited to times of war or emergency measures. *Waddell*{Pipe}(30)

NATURE OF CANADIAN LAW

1. Principles of Canadian Constitutionalism from *Reference re Succession of Quebec* (SCC 1988)

    a. *Rule of law* – idea underlying Rule of Law holds that all exercises of govn't power must find their source in law. Govn't itself must be subject to law, supervised by courts and other officials to ensure that rule of law is upheld. Such officials have ability to provide remedies where government acts outside of rule of law (failing to uphold obligations, or *ultra vires*).

    b. *Federalism* - Relates to division of powers between provinces and Fed set out in *Constitution Act* (1867). NVT's legislative powers are the result of a land claims agreement, while YU and NWT receive their powers through delegation by Fed. Constitutional guarantee of aboriginal self-government (to limited degree) in s.35. Legislative power is divided in s.91 (Fed, crim, fishing, foreign affairs, finance, interprovincial, POGG, etc) and s.92 (PG - motor vehicle act, liquor act, education, hospitals, court procedure, etc.)

        i. BUT, principle is violated by fact that legislatures can send volatile or constitutionally questionable matters to the SCC; permits judges to act beyond the scope of mere interpretation, could be considered *ultra vires.*

    c. *Parliamentary sovereignty / Democracy* - rule by elected officials who act responsibly and therefore govern by the consent of the people. Parl = Crown, HoC, Senate.

        i. BUT, senate no longer powerful. Unelected nature of the senate has always made it an unequal partner in Canadian democracy, with convention holding that its responsibility should be limited so as to respect the concept of responsible government. More prominent due to tendency of govn't to brazenly make patronage of senatorial appointments. While senate has the constitutional right to reject bills, constitutional convention advises that they refrain from using it.

    d. *Protection of Minorities* - set out by s.35 recognition of Aboriginal and treaty rights, and through guarantees in the *Charter*.

2. *Constitutional supremacy* - Constitution is supreme law, any law inconsistent with constitution can have no force or effect. Written and "unwritten" constitutional conventions and principles, shape how parliament and legislatures work in practice (eg. role of prime minister not in the constitution, but nevertheless is a feature of Canadian politics via convention).

    a. ALSO, Previous to 1688 - *monarchical supremacy* - laws can be created, suspended, struck down at the whim of King. After 1688, laws were passed which enshrined superiourity within elected body. Even King is now subject to the laws of state, validly passed by legis.

    b. ALSO, Previous to 1982 - *legislative / parliamentary supremacy* - no agent or body could alter or interfere with the legislation passed by legis. Supreme over the executive and the courts. Validly enacted laws must be respected and enforced by the courts, for instance. The only means for striking down a law is through s.91/s.92 *ultra vires*, eg. where the legislative

body in question did not have the constitutional scope to legislate in a particular domain.

c. ALSO, Post 1982 - *constitutional supremacy* - all legislation in Canada is considered subordinate to the *Charter* and Constitution. Any legislation which infringes on the scope limited in s.91/s.92, or impinges on *guarantees* in *Charter* (or both) has no force or effect.

   i. ALSO, *Charter* has undermined statism (strong political executive in accordance with population deferential to authority; leads to vesting great power within state mechanism, even in a democracy)/ This has altered our tendency to defer to elites.

3. *Responsible Government* – involves three elements:

a. *Confidence* - The idea that in order to govern, the Prime Minister and Cabinet (executive) require the confidence of the House of Commons (legislative).

b. *Government accountability* - Operates with a view to rights of the legislature to scrutinize government actions, and the obligation of government to comply with this scrutiny.

   i. ALSO, *HoC has unlimited power* to require the government to produce documents, witnesses, etc. where required by the House to account for actions, policies, etc. House can limit itself in such investigations, but cannot be limited by the Government or any other party. In fact, obligation of House to request such information to ensure that government acting in best interest of the people.

   ii. ALSO, *Government must provide reasons* if choose not to provide information in accordance with the above; these reasons can be judged as valid *by the House*, or invalid; if invalid, the government is found to be in contempt, and non-confidence motions may proceed from this.

c. *Ministerial responsibility* - cabinet ministers can be held accountable for any action taken in their names, or any policy enacted in their names.

   i. ALSO, reflects both strong executive authority (remnant monarchy) and democratic accountability.

   ii. But, given size, complexity, and volume of actions taken in minister's name, means that ministers can no longer be well informed of all actions, ergo diminishing meaning - esp. since minister's agents often unelected.

4. Division of powers between branches (not levels) of government

a. *Convention* – No formal endorsement of separation of powers between judicial, executive, and legislative branches - rather, this is established through constitutional convention (as inherited via the Westminster system). This concentrates power within executive branch (Crown and appointed representatives - Cabinet, PM). Through party discipline, and fact that executive will be appointed from majority party, this means that executive branch will

dominate the legislative branch as well, particularly in a majority government situation.

b. *Judicial independence* – in spite of the fusion of powers b/w legis and exec, judicial remains separate, based on three specific elements:

   i. *Security of remuneration* - judge salary is guaranteed in spite of other considerations, so there is no chance of financial considerations affecting the decisions of judges (eg. by coercive act by government).

   ii. *Tenure* - judges can only be removed through elaborate process requiring that severe misconduct be proven.

   iii. *Case assignment* - institutional independence re: assignment of cases to judges, thereby preventing the manipulation of case through its assignment to a specific person

CREATING LEGISLATION

1. GENERAL PROCESS - Act must receive Royal Assent from the LG following the third reading (first is brief introduction, second is debate about general principles, third is vote on passing individual sections). After assent is given the Act becomes law, coming into force on the date specified in its Commencement.

    a. *Policy Development* - begins within a ministry, as part of political ideology or through the analysis of internal shortcomings, lobbying, and other processes. Determine and elucidate need for policy amendment or addition. Gather and develop information required to articulate policy, determine whether or not *legislation* (as opposed to alternate means) is required to achieve the policy goals which have been identified. Also consider impacts on other legislation, unintended outcomes, fit with governmental priorities. If these imply that legislation is required, leads to RFL (request for legislation). RFL approved by Cabinet, Treasury Board, Legislative Counsel, etc. - moves on to drafting stage.

    b. *Drafting* - includes ministry solicitor and legislative counsel as well as drafters on the drafting team. Follow drafting instructions in order to transform legislation into bill form.

    c. *Enactment - First reading* (brief introduction by sponsoring minister), *second reading* (debate in principle - not specific components, but only general intent), referred to committee for section by section discussion, allows for amendments to be made (*Committee of Whole House* without speaker, or subject matter committees), reported back to legislation with amendments indicated, third reading (final debate and vote - usually little debate however); enacted at this point.

    d. *Commencement* - Requires Royal Assent, as granted by "the nod" - the law is now statute, and will come into force on the date specified in the commencement portion of the Act. Alternately, commencement can be retroactive (except in Criminal), on the date of Royal Assent (where not otherwise specified), or on the date that another Act comes into effect, or when the GG says so.

2. DEFINITIONS

    a. *Hansard* - verbatim record of debates of legislative assembly. Now available, in BC at least, through video transcription and closed captioning! See: everywhere re: limited weight, hah

    b. *Votes and proceedings* - official printed record of the proceedings of legislative assembly. Includes records of bills, petitions presented, votes taken. Form of minutes, not verbatim transcription, unlike Hansard.

    c. *Legislative Counsel* - Lawyer who specializes in the intricacies of drafting legislation, generally assigned to specific ministries; ensure that the legal implications of legislation, possible conflicts, and statutory interpretation are understood and implemented meaningfully in legislation.

d. *Request for legislation* - prepared within ministry in accordance with policy directives, submitted to Cabinet for approval. Ministry solicitors will be involved in the development of the RFL, which is effectively a *three-column document* - describes current legislation, the proposed changes, and the rationale which underlies these changes. Will also contain instructions for drafting with a view to previously considered outcomes and consequences of legislation through the lens of what is intended to be accomplished via legislation. Treasury Board must be involved in RFL as well, where relevant to cost implications.

e. *Bill* - A proposed act placed before the Legislative Assembly for approval; a piece of legislation. Can be public (general law) or private (limited to particular individual or organization - eg. establishing and setting up tax benefits for a charity - numbered Bill Pr. 401 and up).

i. *Government bills* - implement policy, drafted by Legislative Counsel, presented by minister responsible, numbered consecutively for each session (beginning at Bill 2, as Bill 1 is traditionally set aside for An Act to Ensure the Supremacy of Parliament).

1. *Financial bills* - must originate in House of Commons, and not other components of Parliament (Crown, Senate). Must be government bills, and not private members bills. This reflects idea that spending is part and parcel of responsible govn't, can only occur with govn't accountability to public via democratic process.

ii. *Member's bills* - individual member, usually of opposition, numbered for each session beginning with Bill M 201. Cannot deal with tax issues, etc. - only government bills can do this.

iii. *Exposure bill* - Occurs where bill introduced intended to die on the Order Paper, meaning that it is simply meant to allow those interested an opportunity for input before a final bill is introduced for enactment.

iv. *Bill 1* - AKA *An Act to Ensure the Supremacy of Parliament*, first act of BC Provincial Legislative Sessions traditionally, perpetuates the right of legislature to sit and act without leave from the crown.

f. *Regulations* - see SUBORDINATE LEGISLATION. Further, important issues should be dealt with in Act, not regulation, so that legis. have a chance to consider and debate matters. Certain powers cannot be drafted via regulation, including those which involve penalties for serious offences, affecting rights and freedoms.

SULLIVAN

1. Nature of Sullivan's reformulation of the Driedger approach

a. Determine the meaning of legislation in its total context, having regard to the purpose of the legislation, consequences of proposed interpretations, presumptions and special rules of interpretation, as well as admissible external aids. The Courts must consider and take into account all relevant and admissible indicators of legislative meaning.

b. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of *plausibility* (compliance with legislative text) *efficacy* (promotion of legislative purpose) *and acceptability* (the outcome is reasonable and just).

c. Sullivan says that the judges must acknowledge the extent of their discretion in interpretation; failure to address this issue undermines democracy and transparency in the process. Courts cheat by misrepresenting their work as someone else's work. Focus is how courts alter complexity. Courts should be more honest about what they are doing, and be straightforward

2. Sullivan's communication breakdowns

a. *Ambiguity* – where word capable of supporting multiple meanings. Can be syntactic, in which it is unclear which words are modified by a phrase, or contextual, based on assumptions re: audience

b. *Elliptical* – Omitting factors that are assumed to be taken for granted but are not always

c. *Improper Bivalence* – Assuming the issue is true/false when it could actually sit on a spectrum

d. *Over-Inclusiveness* – classification is too broad, unclear whether to apply rule as a result

e. *Under-Inclusiveness* – classification too narrow, fails to capture circ. relevant to aims

f. *Vagueness* – general terms are used assuming the audience will make them more specific

g. *Miscommunication* – communication breakdown could be due to error or mistake.

3. Sullivan's criticism of the plain meaning rule

a. The fault in plain meaning falls on indeterminacy in language; the meaning which is plain to one person may not be plain to another. This is dependent on the context relating to the speaker, the context of the intended audience, social conventions, cultural assumptions, etc.

b. Dictionary definitions provide multiple meanings for any given word, exhibiting the indeterminacy and ambiguity of meaning, which is also shown by the fact that different courts or judges within a court will apply different "plain meanings" to a word or phrase. Finally, judges may apply plain meaning in one circumstance, but not in another, without any justification for this discrepancy.

4. Sullivan's criticism of legislative intent

a. Can only be inferred, is rarely able to be directly determined. Requires resort to textual and extra-textual factors. Intention is malleable. There are different understandings of original meaning - the abstract sense of the term, connotation versus the denotation of the text. Courts are also seeking an intent relevant to an era which may be decades old, and no longer meaningful to a society which has progressed.

b. Sullivan does not want judges to stop seeking intent, but rather is endorsing that they are more transparent in this process; that they acknowledge complexity of the inferential process to discover intent. Further, should acknowledge extent to which law is made through this process.

5. Sullivan's criticism of individual actions in the realm of statutory interpretation

a. It is not undemocratic to do this; the court process which forces making the interpretation allows an individual citizen to bring an action to get clarity, transparency. Allows an individual citizen to reshape the law. actions may not be accessible to all members of society (in particular, most marginalized by the law will have least access), and further, such actions will necessarily be coloured by intentions and interests of the party that brings suit.

6. Underlying assumptions of the plain meaning approach

a. Meaning inheres in legislative texts and some of it is 'plain'

b. Legislatures have intentions when they enact legislation and these intentions are knowable by courts when called on to interpret legislation

7. Rules used to distinguish between first impression and post-interpretation meanings

a. PMR #1: artful text selection - text chosen leads to different interpretations

b. PMR #2: elastic co-text - refers to surrounding text: can choose narrowly or broadly. More text = narrower meaning.

c. PMR #3: the shifting meaning game - holds that Plain meaning can refer to many things:

i. Dictionary meaning / literal or facial meaning – derived from words alone / intended meaning – meaning intended by the legislature / audience meaning – for who legislation was written / applied meaning – meaning of text in relation to facts.

d. PMR #4: it must be plain to you if its plain to me - ambiguity in different concepts of 'plain meaning'

e. PMR #5: the inherent meaning illusion - false a-contextual concept

f. PMR #6: abandoning ship - abandon rule when plain meaning takes them where they don't want to go

g. PMR #7: can look at extra-textual evidence of legislative intent to support plain meaning – but cannot be used to vary/contradict plain meaning

   i. This creates a zone of certainty: interpretation free, supports formal equality, and is used as a neutral proxy for strict construction (fiscal, penal reasons)

8. Fidelity to legislative intent - consistent with the idea that the only legitimate source of law is legislature. Supports positivist view that law is one thing and not-law another thing – easily tell them apart. Corollary doctrines include the original meaning rule / doctrine of presumed intent / distinction between interpretation and amendment.

   a. FLI #1: presume nothing worth mentioning has changed; legislative intent is fixed

   b. FLI #2: more meaning games - sometimes original meaning is:

      i. Connotation: words used by legislature in abstract sense or dictionary definition

      ii. Denotation: facts to which words have been applied when legislation was first enacted

   c. FLI #3: distinguish sloppy drafting from legislative error - drafting errors can be corrected but not legislative errors.

   d. FLI #4: presume the legislature wants what you want - the intention of Parliament is deemed to include everything the courts care to impute to Parliament, so long as it does not contradict what Parliament actually said

* denotes decisions from courts other than SCC

CASES

- *R. v. McIntosh* (SCC 1995)

    - Facts

        - Hudson, deceased, killed by D. over a dispute concerning DJ equipment. D. confronted deceased with a kitchen knife, deceased shoved D. and raised equipment dolly as if to attack D. D. found guilty of manslaughter, but appeals to SCC holding that the trial judge erred in holding that self-defence only available to those who were not initial aggressors. Crown holds that s.34(2) only applies to those who are not initial aggressors (which D. was in this case) - however, plain meaning of statute omits initial aggressor qualification.

    - Issue

        - Can one gain s.34(2) protection if one is an initial aggressor, or is s.35 the only defence provision available to initial aggressors? s.34(2) would require only reasonable apprehension, while s.35 would require retreat.

    - Rule

        - Majority hold that trial judge erred in instructing jury, as s.34(2) does grant self-defence rights even to initial aggressors. New trial ordered.

    - Principles

        - Where no ambiguity is apparent, the statute must be interpreted in accordance with *golden rule* of literal construction (plain meaning), necessary but not sufficient (eg. more is required)

            - The golden rule of literal construction holds that a statute must be interpreted in a manner consistent with the plain meaning of its terms. Therefore, in this case, the plain meaning clearly suggests that s.34(2) should be available even to initial aggressors. However, further consideration may be required in accordance with Driedger's modern principle.

        - Driedger's modern principle must be applied, as this approach is supported by precedent (*Re Rizzo & Rizzo Shoes, Ltd.*)

            - Statutory interpretation cannot be founded on the wording of the legislation, but must be read in entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Effectively, holds that internal consistency, the intention of the Act, and the intention of

Parliament are required, along with ordinary meaning of legislation, in order to effectively interpret and apply legislation. In this case, however, the confused nature of the *CCC* in dealing with self-defence precludes conclusive determination of their intent.

- The legislature is presumed to be sufficiently competent to deliver their meaning.

    - Legislation is deemed to be well drafted, to express completely what the legislature wanted to say. Therefore, words can not be read in, as this would be tantamount to amendment.

- Where there is ambiguity and restriction of freedom is at stake, the Courts must adopt interpretation which maximizes freedom

    - In accordance with Locke's theory, clarity must be emphasized when the government is legislating matters concerning restriction of freedom. Where there are doubts or ambiguities concerning such matters, the Courts must interpret statute in such a way so as to favour the person against whom it is enforced (eg. the liberal interpretation must apply when imprisonment is at stake).

- Ambiguity is not absurdity; Parliament has the right to draft illogical legislation, and it is the ambit of the Courts to address only ambiguities, not absurdities

    - Ambiguity is a lack of clarity in legislation, while absurdity is an outcome which contravenes common sense. They are not the same thing, the former being the purview of the courts, the latter being a right of the legislation. The Courts have no right to amend legislation on the basis of absurdity, this is the right of the legislature exclusively. So, where an unambiguous law leads to an absurd conclusion, the remedy is to elect representatives who will address the absurdity, not to appeal to the Courts.

    - Thus, while s.34(2) on its plain meaning is illogical, in that it extends a broader defence to those who commit more serious provocative assaults, and requires a greater duty of those who commit less serious provocative assaults (namely, the duty to retreat), this absurdity can only be addressed by lawmakers - not law interpreters.

- Untenable to expand the role of judges from law interpreters to lawmakers; incompatible with ignorance of the law being no defence, s.19

    - Society can hardly expect populace to know the law, when the law in fact differs greatly from the law in writing, as it would if the Courts were to read additional words into s.34(2). This would controvert democratic principles as well, undermining the right of Parliament to legislate, and

where they see fit, legislate illogically.

- Policy

    - Inscrutability of intent - It seems unlikely that the lack of intent was as inscrutable as Iacobucci implied in his decision, as McLachlin was able to make a compelling case to the contrary in her dissent - the history that she provides seems to incontrovertibly show that the intention of parliament was indeed to set out two types of defence - justifiable homicide (unprovoked, duty not to use excessive force) and excusable homicide (provoked, duty to retreat, duty not to use excessive force). In accordance with Heydon's case, the a priori common law also makes a similar distinction.

    - However, McLachlin argues in dissent that the prima facie ambiguity of s.34 is clear from the different interpretations taken by different courts. However, these Courts made plain that they were undertaking different approaches to interpreting the statute. Therefore, their findings were not inconsistent with the idea that there is a plain meaning. I found Iacobucci's interpretation to be more compelling here.

    - McLachlin argues that the idea that the most favourable interpretation should be used in case of ambiguity is contradicted by the fact that this rule should only apply where real ambiguities arise. This argument is flawed, however, in that either there is an ambiguity, and therefore the statute should be interpreted favourably, or there is no ambiguity, and therefore the plain meaning should suffice.

    - It is probably not ideal policy that we encourage aggressors to provoke attacks with serious harm, as this would allow them to justifiably kill anyone who responds (eg. if you want to kill someone for whatever reason, attack them with great harm, and if they respond, kill them - broad defence does not require retreat - deal them a death blow, and full defence of the law can be had).

- *Re Rizzo & Rizzo Shoes, Ltd.* (SCC 1998)

    - Issue

        - What is the appropriate means for interpreting statute? Should context, history, and intent be used in order to go beyond the plain meaning of the words in a statute?

    - Facts

        - Employer goes bankrupt, question concerning whether employees can claim severance and termination pay from the employer under the ESA. The plain meaning of the ESA seems to imply that they cannot, as the wording requires

that the employment be terminated "by the employer", which appears to be inconsistent with termination caused by a creditor petitioning the employer into bankruptcy. The latter situation seems to be, *prima facie*, termination caused "by operation of law." - the OCA agreed with this latter approach.

- Rule

    - Plain meaning is not sufficient to interpret legislation, Driedger approach is appropriate. This approach holds that the scope of the act is to provide benefits where employment has been terminated not of own volition; benefit conferring legislation must be interpreted as broadly as possible; therefore, the legislation does extend to employees terminated through bankruptcy.

- Principles

    - *Driedger's modern principle* is the appropriate method to apply in interpreting statute - contextual analysis. Plain meaning provides only an incomplete analysis.

        - Statutory interpretation cannot be founded merely on the wording of the legislation, but must be read in entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Presumes harmony, coherence, and consistency between statutes dealing with same subject matter. Effectively, holds that internal consistency, the intention of the Act, and the intention of Parliament are required, along with ordinary meaning of legislation, in order to effectively interpret and apply legislation. This is the primary principle of statutory interpretation in Canada..

    - *Interpretation Act,* s.12 (or s.10 of *Ontario Interpretation Act*) holds that all legislation is to be viewed as remedial, and should receive liberal interpretation consistent with its objectives. Benefits conferring legislation should be interpreted in a broad and generous manner.

        - Attempts to attend to some defect or dysfunction of society, and therefore, has a purpose. Enactment must be interpreted with this purpose in mind, given fair, large, liberal construction so as to ensure that it can best attain its objects. This is the flip side of Locke's coin; where the restriction of freedom or heavy criminal sanctions are at stake, legislation must be read as narrowly as possible, and where ambiguity arises, the court must err in favour of the person against which sanctions are to be levied. Where benefits are to be conferred, legislation must be read as broadly as possible in order to best achieve the object of the law, in this case, to extend rights and protections of the ESA to as many employees as possible. Attempts to attend to some defect or dysfunction

of society, and therefore, has a purpose. Enactment must be given fair, large, liberal construction so as to ensure that it can best attain its objects.

- Legislature does not attempt to produce absurd consequences, but rather desirable outcomes through legislation.

    - Legislation can be considered absurd where it is unreasonable, inequitable, illogical, incoherent, inconsistent, incompatible with the ambit of the legislation. Further, an interpretation which renders the legislation pointless or futile can also be labelled absurd. However, the Court must be careful not to cross the line from interpretation into lawmaking - laws cannot be interpreted in manners which their text cannot support. The legislature effectively has the right to legislate absurdity or illogically; the judiciary has the right to interpret legislature in the most meaningful, desirable, and least absurd manner consistent with the text.

- Legislative history, as a component of the Driedger approach, is an appropriate exercise to employ in statutory interpretation, as is Hansard.

    - Courts must be aware of the limitations of such evidence. Must be treated as somewhat unreliable, and given little weight. However, such evidence can be used in order to shape the understanding of the ambit and intent of legislation. However, it should be noted that amendments cannot be used to determine or argue what an act intended previously (the previous state of the law) - this is found in s.17 of the *Interpretation Act*.

- *R. v. Sharpe* (SCC 2001)

    - Facts

        - Sharpe charged with possession of child pornography, challenges charges via s.2 of the *Charter*, alleging that s.163.1 violates the right to free expression.

    - Issue

        - Is s.163.1 of the *CCC* constitutional in its banning of child pornography, or does it unjustifiably intrude on the right of Canadians to free expression in accordance with s.2 of the *Charter*?

    - Rule

        - s.163.1 does conflict in some ways, however its overarching approach is constitutional, and reflects a balance between the right to free expression and the

obligation of the Fed to protect children from harm.

- Principles

  - Where a provision can be read both in a way that is constitutional and in a way that is not constitutional, the former reading (constitutional compliance) must be adopted.

  - In order to determine whether legislation is overbroad, it must first be determined what the law catches;

    - Effectively, a law cannot be said to catch too much before the Court determines what it does in fact catch. It is not sufficient to accept the allegations of the parties concerning what the law actually prohibits Thus, the first step in a consideration of overbreadth is a construction of the application of the relevant law.

  - Intent is important in any understanding of legislation, in accordance with Driedger's modern principle.

    - In this case, the purpose of legislation is clearly to protect children from harm by banning production, distribution, and possession of child pornography. In this case, the Court looks to Hansard. Legislation aims at clear forms, including both visual representations as well as written materials which incite or endorse sexual activities w/ children which would be offences.

  - Presumptions can be rebutted with evidence.

    - While statutory interpretation involves some presumptions - for instance, that a word will have a consistent meaning throughout legislation - these presumptions can always be rebutted by evidence.

  - Practicality can be an important component of statutory interpretation.

    - For instance, empowering legislation should not rest on impossible premises; we cannot know the intention of the producer of child pornography, so to use this as the basis for determining whether an offence has occurred would be asinine. This is particularly true where the mischief occurs away from the intent (eg. harm occurs regardless of intent of producer of child pornography).

  - Every word in a statute must have meaning; therefore, if not expressly defined, meaning must be given through interpretation.

- In this case, dictionary definitions used, in addition to other elements of the contextual approach, golden rule, mischief rule, in order to arrive at a meaningful and relevant interpretation.

- If evidence suggests that the law should be interpreted in a particular manner in order to achieve objectives, this is the manner to be used.

    - In this case, the Court interprets "people" as including both real and imaginary people (contravening the definition of person found elsewhere), in accordance with the fact that the evidence suggests that harm can be done to children via this material regardless of whether the persons depicted are imaginary.

- Approach for interpretation must lead to a consistent meaning for the law; objective standard can aid with this task.

    - For instance, material should not be considered pornography in the hands of one person, but acceptable in the hands of another. Therefore, the use of an objective standard is helpful, in that it can create a workable compromise. In this case, it is not the author's intention which is used to judge the material, but rather the reasonable observer's perception of the material's purpose.

- *Merk v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 771* (SCC 2005)

    - Facts

        - Merk notices misappropriation by union worker, reports to president, who fails to right the wrong and eventually terminates Merk's employment. Merk holds that this dismissal was wrongful in accordance with the *Labour Standards Act* of Saskatchewan, s.74 which extends protections to whistleblowers such that they cannot be fired for having reported misdeeds to a lawful authority.

    - Issue

        - Does a "lawful authority" in *Labour Standards Act* Saskatchewan s.74 include persons within the hierarchy of the organization, or can it only refer to law enforcement or other agents of the government *qua* offence?

    - Rule

        - "Lawful authority" for this purpose means anyone who directly or indirectly supervises the employee within the company, or anyone in lawful authority external to the company. Applies Driedger step-by-step.

- Principles

    - Grammatical and ordinary sense must be considered; concerning "lawful authority", supports the idea that this refers to anyone with authority to lawfully remedy the problem, not only those dealing *qua* offence.

        - While SCA held that a "lawful authority" was only someone who could deal with the allegation *qua* offence; effectively, someone who could enforce the law, prosecute the crime, deal with the issue in a public manner. However, SCC holds that this refers to one who has authority to lawfully remedy the problem, whether through public or private means. For instance, lawful authority is a landowner who evicts trespassers from land.

    - The scheme of the act must be considered. Effectively, a consideration of whether this is a benefits-conferring or freedom-restricting Act.

        - In this case, scheme is to extend protections to employees of organizations, to ensure that they are not mistreated if whistleblowers. Hansard is employed to this end, and in the case of such legislation, it must be interpreted where ambiguous in such a manner so as to favour the claimant.

    - The object of the act must be considered; an attempt to identify what wrong is being remedied, and interpret the act so as to best achieve remedy.

        - Public interest in reducing unlawful activity, and also in resolving matters privately. SCA's approach denies protection to loyal employees; disloyal employees, who go outside of the "ladder" internal to the organization are protected; this seems inconsistent with the idea that employees must exhaust internal mechanisms before going public, and that public involvement is only appropriate where such mechanisms have not worked. Public is best served by having such matters dealt with internally.

    - Public policy must be considered, not only within this jurisdiction but in others as well, in order to inform interpretation.

        - In this case, such review holds that the failure to resort to internal means to resolve issues is condemned by courts, and therefore legislation which is inconsistent with this goal is contradictory in its aims.

    - Results should not be anomalous, inconsistent, or absurd. Irrational distinction occurs where interpretation leads to outcome in which person deserving of better treatment receives worse, or vice versa.

- Parliament has the right to legislate absurdity. However, this only stands where there is no possibility of reinterpreting legislation in a logical manner, consistent with plain meaning, which is not absurd. In this case, extending no protection to someone who attempts to address matters internally, but strong protection to someone who attempts to address matters internally, in spite of policy initiatives which strongly favour the former, is irrational.

- Legislative history must be considered as part of the entire context.

    - While SCA holds that amendment to s.74 was incremental advancement, such a position effectively fails to differentiate between original and amended legislation (eg. there is no point in amending legislation where the result is the same as if the legislation had not been amended). Further, there is no justification to read into s.74 the more restrictive definition of legal authority. Therefore, s.74 part of broader reform, and does not constitute a mere incremental step.

- Penal provisions must be interpreted in such a manner so as to limit restriction of freedom (strict construction);

    - Two issues here. Firstly, this could more appropriately be considered a benefits-conferring statute, rather than a penal statute. Secondly, if it is accepted that this is a penal statute, then the rule of strict construction would apply - however, strict construction is only meaningful insofar as it is able to advance the object of the statute in question, regardless of the impact on accused persons.

- Policy

    - Dissent holds that the broad and remedial approach in Interpretation Act for such legislation strays from principles of statutory interpretation, and in particular can interfere with the intent of the legislation. Further, holds that "lawful authority" is only one with the authority to enforce federal and provincial statutes.

- *Re Canada 3000 Inc* (SCC 2006)

    - Facts

        - Airline goes out of business, has debts owed to NAV and airports. *CANSCA* holds that Canada 3000's airplanes can be detained by NAV or airports via court order as security against the debts under s.55. Airplanes are leased from legal titleholders, who contend detention, as they feel that s.55 cannot apply to those who did not incur charges. NAV argues that the debts can be held against

airplanes, however.

- Issue

    - Can "owner" under s.55 of *CANSCA* refer to the lessee (legal titleholder), or only the lessor (airline operator)? Application of Driedger approach.

- Rule

    - The legal titleholders are not intended to be considered "owners" within the contemplation of s.55 - this would allow planes belonging to titleholders but leased to other airlines to be detained as well, an absurdity (eg. seizing Air Canada plane to secure Canada 3000's debts).

- Principles

    - Must consider condition of things existent at time of enactment; part of understanding the legislative intent - object of act.

        - The circumstances of the times can be instructive in determining what the intent of the act is. In this case, legislation appeared to respond to lack of accountability for user charges in an increasingly volatile commercial air transit industry. NAV is forced to do business with such companies, which may not have any assets to liquidate in case of financial collapse.

    - Must consider internal consistency; where French and English meanings of a statute differ, there are two considerations: shared meaning and restricted interpretation

        - Shared meaning - if there is a meaning shared by the two languages, and this meaning is consistent with the ambit of the statute, this meaning will be preferred. This is not determinative, however.

        - Restricted interpretation - if there is no meaning shared by the two languages, or alternately, this meaning is inconsistent with the ambit of the statute, then the meaning which offers a narrower and more restrictive meaning is preferred.

    - Must consider legislative framework; based on the Driedger assumption that statutes dealing with the same subject matter will be harmonious

        - In this case, the general policy holds that the word "owner" generally deals with the person in legal custody of the aircraft, and not the legal

titleholder. This is supported by Canadian and international statutes.

- Must consider legislative history; based on Hansard, which is of limited weight, but can illuminate concerning background and purpose.

    - In this case, finds that *CANSCA* does not mean to usurp existing framework, but rather fit within it. Effectively, the safety requirements of air transit should always outweigh the privatization legislation; therefore, it is important to ensure NAV and airports are able to service airplanes regardless of ability to pay.

- *Shaklee Canada Inc. v. Canada* (FCJ 1995)

    - Facts

        - Company attempts to avoid paying excise tax on their vitamin, mineral, and fibre products by claiming that they are in fact food, and therefore exempt under *Excise Tax Act*. Govn't holds that these items do not constitute food.

    - Issue

        - Do vitamins, minerals, and fibres constitute food within the meaning of the *Excise Tax Act?*

    - Rule

        - Vitamins, minerals, and fibres are not food within the meaning of this act.

    - Principles

        - Presumed that the legislator wishes to be understood by the citizen, that law drafted in accordance with rules of language in common use

            - Statutes written for the people they affect.

        - Dictionaries, expert testimony, academic and govn't publications are all useful, but not determinative in finding definition; decision lies with court

        - Dictionaries are of limited utility, in that they rarely produce a meaning which does not require further interpretation on the part of the court.

        - Dictionary definition does not provide context. Diff dicts. provide different definitions, and seek to provide broad, all-encompassing definitions.

- Can also determine ordinary meaning by imagining subject matter in a very ordinary situation; this is often demonstrative of ordinary meaning.
    - For instance, concerning whether vitamins are food, if someone said "I'm hungry", it would seem out of place to offer a vitamin.
- Meanings of words must obviously evolve with society, and therefore first impression of word meaning should not be accepted w/o reflection.

- *R. v. Riddell* (QCCA 1973)
    - Facts
        - D. accused of smuggling road grader into Canada, having driven it over the border past a customs office, did not take any pains to conceal this effort and therefore argue cannot be smuggling, as dictionary definition of smuggling involves clandestine activity.
    - Issue
        - Does smuggling refer to bringing goods over border without paying tax, or rather, bringing goods over border without paying tax using clandestine means?
    - Rule
        - Smuggling does not require clandestine means in its definition.
    - Principle
        - Legal definition can vary from dictionary or other ordinary definition. Where this occurs, legal definition is *paramount*; not determinative.
            - Legal definition focuses on lack of duty paid, whereas dictionary definition focuses on clandestine nature.
        - The intention of the legislature can sometimes be found in the text itself. e.g. the use of conjunction "or" conveys different meaning than "and".
        - *Rule of effectivity* - can't presume that legislature drafted statute without purpose or meaning; every word within statute must be given meaning.
            - eg. "and" means, in this case, listing criteria which must all be fulfilled in order to satisfy definition; "or" means that either of the enumerated criteria could be fulfilled. Neither element is essential in "or" (one or the other), both are essential in "and".

- *R. v. Lane, Ex p. Gould* (NBCA 1937)

    - Facts

        - Div. of powers issue, PG enacts law concerning slot machine ownership (s.92 (13)), D. holds that this is criminal law (s.91(27)) concerning gambling.

    - Issue

        - Is Suppression of Slot Machines Act *ultra vires* the PG of NB?

    - Rule

        - No. Criminal act requires accused; this act deals only with property confiscation, and not offences, therefore cannot be criminal; no punishment, no accused; in spite of "suppression" in title of act, not criminal.

    - Principles

        - Titles now part of act; historically were added to King's proclamations by others, but now put to the house and adopted.

        - Titles have similar weight to preamble, looked at in order to remove ambiguity in words; therefore, not determinative in showing that this Act is criminal.

- *Committee for the Commonwealth of Canada v. Canada* (SCC 1991)

    - Facts

        - Comm. asked to stop handing out political information at airport, as airport authorities held that prohibited under *Government Airport Concession Operations Regulations*.

    - Issue

        - Does the Act intent to prohibit political activities, or is it in fact meant to govern commercial activities within airports?

    - Rule

        - Words in title and general nature of statute imply that the Act is meant to regulate the commercial operations of the airport, travel and transportation in addition, and not intent of Parl., therefore, to regulate political activities.

    - Principles

- Both full title and short title of Fed regulations can validly be used to clarify the meanings of other provisions of regulations.

    - Eg. in this case, operations considered to connote industry, profit, ergo not non-profit political activity.

- Act deals with primarily issues concerning concession stands and commercial passenger transportation. Therefore, not plausible to connect to politics / leaflets.

- Court cannot add or delete anything from legislation in order to make it inconsistent with the *Charter*. Inconsistency with the *Charter* means that the law is invalid.

- Where there are multiple interpretations available, preferred approach requires that the Court adopt the interpretation which does not conflict with the *Charter*, where available

- *Re Anti-Inflation Act* (SCC 1976)

    - Facts

        - Fed wants to enact legis. which concerns wages, etc, under POGG. In so doing, includes in preamble text which implies that inflation national concern, therefore meeting criteria set by Haldane/Watson re: emergency doctrine.

    - Issue

        - Is preamble of *Anti-Inflation Act* sufficient to determine whether law intra vires the Fed?

    - Rule

        - Preamble not sufficient on its own; however, the nature of the legislation and the concerns mentioned in the preamble convince court that Act is intra vires Fed.

    - Principles

        - Forceful language not sufficient to carry argument, where circumstances attending use do not support constitutional significance.

            - Eg. the use of the word emergency would not have made a difference; this has no effect on the pith and substance of the law.

        - Preamble indicates the intent of Fed, which is in this case, enactment of program aimed at remedy of serious national condition. Not sufficient, but a start.

- *R. v. Lohnes* (SCC 1992)

    - Facts

        - SCC must interpret meaning of s.175(1) of *CCC* concerning what constitutes a "disturbance" in a public place.

    - Principles

        - Should consider all conjugations, but with understanding that nouns may hold different meanings than verb forms of same root word; to disturb is not necessarily to create a disturbance.

        - Framework of legislation suggests that Fed required more than mere emotional disturbance, evidenced by inclusion of specific (otherwise lawful) activities, and restriction of act to public places.

        - Headings, not determinative, but can be used to support interpretive approach, in this case relevant to intent, as this provision under "Disorderly Conduct".

- *R. v. Basaraba* (MBCA, 1975)

    - SCC must interpret whether heading in *CCC* useful for SI, "Breach of Contract, Intimidation, and Discrimination against Trade Unions" - D. holds that this heading implies that all statutes within refer only to Trade Unions. Denied.

    - Unofficial versions of the *CCC* confuse issues of statutory interpretation by printing marginal notes so that they appear to be headings; marginal notes should not be relied upon in interpretation, while headings can be usefully referred to in resolving ambiguity

- *R. v. Wigglesworth* (SCC 1987)

    - D., RCMP officer, holds that under s.11(d) of the *Charter*, having already been "convicted" of offence under internal RCMP provisions, cannot be tried again under *CCC* provisions for same conduct.

    - *Charter* to be interpreted through analysis and purpose of the guarantees made, must be understood in light of the interests that they are meant to protect.

        - In this case, s.11 (and s.8, s.9, s.10) are meant to deal with criminal matters, as can be discovered through framework, use of words, etc.

    - Marginal notes cannot be relied on in interpreting the *Charter*, in accordance with the fact that they formed no part of the *Act* which was passed by the legislature.

- Headings can be relied on in interpreting the *Charter,* as these were systematically and deliberately included in enactment, can work to resolve ambiguity. Attempt should be made to reconcile meaning of heading with section, but cannot operate to change clear and unambiguous meaning within section. Important where:

    - High degree of difficulty in resolving ambiguity or meaning of section;

    - Significant length and complexity in provision;

    - Substantial homogeneity in section being considered under heading;

    - Highly specific wording used in heading (less weight where generic);

    - Presence of system of headings which segregate component elements of *Charter;*

    - Strong relationship between terminology in heading to substance of provision.

- *R. v. Jaagusta* (BCSC, 1974)

    - D. searched under *NCA* (now *CDSA*), without r&p grounds. Resists search of his person, arrested and charged. NCA appears to allow such a search, due to nature of punctuation restricting r&p grounds to search of a dwelling house.

    - Common law extends r&p requirement to all searches. Odd that Fed would undermine tradition w/o using more specific language; can't be determined on punctuation alone.

        - Express words required by legislature in order to undermine common law principles. Must be explicit, declarative.

- *R. v. Popoff* (BC Co. Ct., 1985)

    - Rule is to pay little, if any attention to punctuation. Critical matter in statutory interpretation is intent of legis., shouldn't be undermined by mere drafting error.

- *Medovarski v. Canada* (SCC 2005)

    - Appeal of *Immigration and Refugee Protection Act*; D. wants to appeal order for removal, holds allowed due to provision which allows appeals for those "granted a stay". However, old statute could automatically give stays in addition to granting them through discretion of agent. Court must determine whether new statute intended for those receiving stay automatically can appeal.

    - 1. Determine whether there is a discordance, and whether there is a common meaning between the languages. Present common meaning, this favours narrower meaning *Schrieber v. Canada (AG)* (SCC 2002).

- 2. The common meaning found must be compared against the intent of the legislature to ensure that interpretation is valid within context of *Driedger*. *R. v. Daoust* (SCC 2004).

- *Re Simon Fraser University and District of Burnaby* (BCCA 1968)

    - SFU holds exempt from tax under three acts, relating to the idea that the *Universities Act* has been amended in such a way so as to grant exemption. Relies on legis. history.

    - Otherwise, there would be no purpose in deleting words via amendment. In departing from language, the legislature did so intentionally and deliberately. Legislature, in amending *UA*, intended to change the nature of taxable property held by universities.

    - SFU also relies on the fact that this statute relates to tax. Tax statutes are given strict construction, as express wording is required to take money from citizens.

- *Reference re: Firearms Act (Canada)* (SCC 2000)

    - Gun control law enacted by parliament, challenged by the Province of Alberta. In this case, legislative history used to divine Fed's purpose (Hansard, speech by minister)

    - Purpose of laws may be declared in legislation in itself, but can also be ascertained through extrinsic material such as Hansard and other government publications.

    - Extrinsic government material was historically inadmissible, but nowadays is properly considered where relevant, reliable, and assigned weight appropriate to its nature.

    - In this case, excerpts from the speech by the minister are the only other means employed, only extrinsic source accessed. Therefore, strong use of legislative history.

- *Columbia River & Property Protection Society v. BC (Ministry of Env.)* (BCEAB 1996)

    - Attempt must be made to achieve internal coherence among different parts of a statute. There must be no repugnancy or inconsistency between portions or members of an Act.

    - Wherever a statute is ambiguous, must look to other statutes in *pari materia* in order to guide appropriate interpretation of the ambiguity.

    - *Pari materia* statutes by the same legislature are considered consistent scheme absence a contrary intention. Differences are therefore presumed substantive and intentional.

- *R. v. Ulybel Enterprises, Ltd.* (SCC 2001)

    - Provisions of schemes enacted by the same legislature must be read as consistent, harmonious scheme where these Acts deal with subjects in *pari materia*; Driedger.

- *Levis (City) v. Fraternite de Policiers* (SCC 2007)

    - Facts

        - Police officer Belleau becomes intoxicated, commits acts of domestic violence. Subsequently also charged with making death threats and improper storage of a firearm. According to *Cities and Towns Act*, should be immediately dismissed from the police. *Police Act* holds that he may be dismissed, but first must be brought before a disciplinary hearing. These statutes conflict, and so the Court must consider which should apply.

    - Principles

        - First step in legislative conflict analysis is the presumption of legislative coherence, and therefore should be interpreted harmoniously except for where this is impossible.

            - Not sufficient that conflicting statutes deal with the same subject, but must go further; application of one statute must preclude application of another, implicitly or otherwise. Must either be directly contradictory, or concurrent application must lead to absurd or unreasonable results.

            - In this case, application of one statute precludes the other (eg. if *CTA* applied, Belleau does not get a hearing, which is guaranteed by *PA*)

        - There are two applicable presumptions in discerning which of two applicable statutes should apply to a given circumstances:

            - Later prevails over earlier. Presumes that the legislature was cognizant of existing laws when a new law enacted. Therefore, legislature must have intended the difference or conflict between the two to be resolved in a manner which favours the most recent legislative intent.

            - Specific over general. Presumes that the preference of the opposite, of general over specific, would have the effect of rendering the specific legislation obsolete (drown its meaning).

        - In this case, the *PA* is specialized, dealing in police training, conduct, etc. The *CTA* is general, dealing with organization of municipalities. *PA* also more recent.

        - Argument made through legislative intent as well, as purpose of the statute in the *PA* derived from this re: desirability of not immediately terminating officers.

        - Also make an argument from absurdity, but the sword cuts both ways; *PA* creates two classes of municipal employees, but *CTA* creates two classes of police officer.

- *McDiarmid Lumber v. God's Lake First Nation* (SCC 2006)

    - *Associated meaning* - when two or more words are linked by "and" or "or", they should be interpreted re: shared meaning. *Noscitur a sociis* - meaning revealed by association.

    - Not determinative, but one factor which must be considered in the context of all relevant sources of legislative meaning. Can be used to ascertain intention of legis.

    - When legislature links two concepts, ambiguity in one may be resolved by having regard to the other; broad provisions can be read more narrowly.

    - *Rule of effectivity* - legis. avoids meaningless or superfluous words, and neither meaninglessly repeats itself nor speaks in vain. For instance, if one holds that an enumeration of "treaty and agreement" implies that a treaty *is* an agreement, or an agreement a treaty, then either term would be redundant, fail to contribute to meaning.

- *Nanaimo (City) v. Rascal Trucking Ltd.* (SCC 2001)

    - Governments can only act where power to do so is expressly or fairly implied in statute. Can't wield power where not essential, but merely convenient to effectuation of purpose.

- *C.R. et al. v. Children's Aid Society of Hamilton et al.* (ONSC 2004)

    - *Expressio unius* - where a statute enumerates one or more items, silent on others that are comparable, it is presumed that silence is deliberate and reflects intentional exclusion.

    - Reflects presumption that the legislature would not have bothered to enumerate some items, while neglecting to include others, even in general terms; exclusion deliberate.

    - Rules of interpretation are not always in the minds of draftsmen. Accidents, inadvertency will occur, as will abundance of caution, so *expressio unius* not universal.

    - There are three situations in which the legislature's lack of enumeration of a comparable entity cannot be considered to be a deliberate exclusion within the meaning of the act:

        - May have wished to emphasize importance of matters mentioned, or attempted out of caution in order to cover as many potentially relevant entities as possible.

        - Express reference may be appropriate in one context, but unnecessary or inappropriate in another.

        - It could also be argued in certain contexts that because something was *not* specifically excluded, that it may have been intended to be included.

- *Schwartz v. Canada* (SCC 1996)

    - *Uniformity of expression* - words have the same meaning throughout the same statute, although this is presumptive and not determinative. Where different words are used throughout a statute, they must similarly be presumed to have *different* meanings.

- *Bell ExpressVu Ltd. v. Rex* (SCC 2002)

    - Words take colour from surroundings; where provision is part of an Act which is itself a component of a greater scheme of law, expansive surroundings colour interpretation.

    - Principle of interpreting law so as to ensure *Charter* compliance only applicable in circ. of genuine ambiguity, where statute has multiple interpretations of equal plausibility.

    - Automatic presumption of *Charter* consistency means that *Charter* never *applies* to law, but rather only *consulted* to guide interpretation. This could frustrate legis. intent of *Charter* itself.

        - Eg. if all ambiguities are resolved in favour of *Charter* consistency, then this robs the *Charter* of its ability to render inoperative laws.

    - Further problem with *Charter* consistency is also that it would pre-empt review on s.1 grounds; legislature may have intended to create law which is inconsistent with the *Charter*, but otherwise demonstrably justifiable. This would preclude the legislatures from exercising the reasonable limits on *Charter* guarantees. Ergo, cannot presume.

- *R. v. Hasselwander* (SCC 1993)

    - Issue

        - Does an Uzi submachine gun qualify as a prohibited weapon within context of the *CCC*?

    - Rule

        - Intent of parliament was to protect public from the dangers of automatic weapons, which are used only to kill people. Therefore, rather than constructing the definition strictly, it will be constructed broadly in order to ensure that the law can achieve its underlying purpose.

    - Principles

        - Only where the full text has been considered with a view to its context, revealing no certain legislative intent, that rule concerning strict construction will apply. *True ambiguity* must be present. Reasonably capable of multiple plausible

meanings accordant with the context of the statute.

- Fundamental principle is that penal provisions should be strictly constructed. this may be outdated, as criminal law is no longer Draconian; death penalty no longer presumptive punishment for serious crimes.

- Conflict between strict construction and broad construction (endorsed in interpretation acts) is resolved by relegating the former to a subsidiary role.

- *School District No. 44 (North Vancouver) v. Jubran* (BCCA 2005)

- R. brought action against A. in view of *Human Rights Code* of BC, holding that he had been discriminated against in high school. He was wrongly perceived as being homosexual, and was taunted and abused by his schoolmates as a result. Issue here is that, since he was not actually homosexual, was he discriminated against on the basis of his sexual orientation in contravention of the Act?

- Courts must seek out the purpose of such legislation and ensure that it is given its intended effect, in accordance with its quasi-constitutional status.

- Broad licence does not mean that the words of the Act should be ignored in order to prevent discrimination - some relationships will not be subject to scrutiny under the Act

- The approach of this legislation is not to punish the discriminator (that is for the *CCC)* but rather to ensure that the victims of discrimination will be relieved via compensation.

- Concerns the *subjective component* of discrimination: if a person is perceived to have characteristics of protected group, discrimination applies. In this case, the tormentors testified that they did not believe that R. was homosexual. However, actual characteristics are irrelevant; attitudes, prejudices, and stereotypes are the requirements, where these interfere with dignity, respect, and right to equality.

- Discrimination exists where the discriminator's perception or identification of membership in a protected group is objective or purely subjective.

- Regardless of whether a discriminatory effect was intended, the *Charter* analysis is not affected and nor are the available remedies limited as a result.

- *Ludco Enterprises Ltd. v. Canada* (SCC 2001)

- Facts

- Companies structure investment strategy in order to avoid taxation; deduct interest costs against other reported income. Reassessed under *Income Tax Act*, and these deductions were disallowed.

- Issue

    - What is the role of the Courts in interpreting and applying the *Income Tax Act?*

- Principle

    - Court must only interpret *Income Tax Act*; must avoid judicial innovation in application of statute, new rules must come from legislature only.

    - The *Act* reflects a balance of a myriad of principles, and in interpreting this Act must ensure avoidance of upsetting this balance, contrary to legislative intent.

    - The role of the Courts in interpreting the Act is to elucidate ambiguity, particularly in view of undefined words or concepts (such as "income" or "profit")

- *Imperial Oil Ltd. v. Canada* (SCC 2006)

    - Strict approach to interpretation of tax statutes is no longer appropriate; the modern approach must apply to such statutes;

    - Tax statutes are often complex, balancing multiple interests, and therefore the words of such acts must be carefully considered; should not deviate far from ordinary meaning.

    - Taxpayers must be able to safely rely on tax statutes in order to arrange their affairs in business and personal life; have right to arrange affairs to minimize amount of tax paid.

    - Where the words of a statute are precise, incapable of bearing multiple meanings, then the ordinary meaning of the words plays a dominant role in interpretation process.

- *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)* (SCC 2004)

    - Facts

        - Calgary uses *Taxi Business Bylaw* in order to regulate taxi industry in the city, puts a freeze on taxi plates being issued. Challenged by the Plf. as being UV.

    - Principle

        - Broad and purposive interpretation, guided by the Driedger contextual adopted, in order to ensure that municipalities have sufficient power to achieve their goals

        - Municipalities usually granted power through broad authority over generally defined matters, rather than previous system of specific powers in certain areas.

- Reflecting the nature of modern municipal powers, statutes which grant them authority must be interpreted broadly to ensure that statutory purpose fulfilled.

- *Laporte v. College of Pharmacists of Quebec* (SCC 1976)

    - Statutes creating professional bodies are those which create a monopoly; access to profession is controlled, and laws protect members in good standing from competition.

    - Statutes which fit these criteria must be strictly applied. Anything which is not expressly prohibited may be done with impunity by anyone not a member of closed association.

- *British Columbia (Attorney General) v. Infomap Services Inc.* (BCCA 1990)

    - Golden rule of construction is that the statute should be given plain meaning except for where this would lead to absurdity or inconsistency; applicable where no ambiguity.

    - Court must be aware, before adopting interpretation in case of ambiguity, of consequences of a particular application; should not alter prevailing bus. or pro. practices

    - Professional body legislation must be strictly constructed; any activity not expressly prohibited must be permitted, even where this interferes with the spirit of the legislation

- *Veterinary Medical Assn. (British Columbia) v. MacDonald* (BCSC 2004, BCCA 2005)

    - SCC holds that statutes which create professional monopolies should be strictly construed; any activity not expressly prohibited must therefore be permitted.

    - Broad construction of PB Acts leads to unreasonable business consequences, and out of step with everyday life / modern reality. Must consider consequences in interpretation.

    - On Appeal, Court holds that the TJ did not specifically mention Driedger, but effectively applied the principle; no ambiguity offered by word “dentistry”.

- *Veterinary Medical Assn. (British Columbia) v. Bishop* (BCSC 2006)

    - Driedger’s modern approach is preferable to the strict construction rule; the latter rule is a secondary principle of SI, and should be employed *only* where there is true ambiguity.

- *Benner v. Canada* (SCC 1997)

    - Facts

        - Man born outside of Canada; required by law to apply for citizenship (mother was Canadian). Application was refused due to criminal clearance and security checks. Invoked s.15 of the *Charter* (discrimination).

- Principles

    - Crown argues that discrimination occurred in 1977; therefore, the matter had already been dealt with by the time of the *Charter*'s enactment in 1982; ergo would be retroactive.

    - Rights do not crystallize at birth; they represent a continuing or ongoing situation; therefore, *Charter* protections apply to those born before 1982.

- *Dikranian v. Quebec (AG)* (SCC 2005)

    - Two criteria for a vested right:

        - Individual's juridicial situation must be tangible and concrete, not general and abstract.

        - Legal situation must have been sufficiently constituted at the time of the commencement of the new statute (acquired or inevitable)

    - Mere possibility of availing oneself of a specific statute is not a basis for arguing that a vested right exists; further, the situation must also have materialized.

    - Rights and obligations resulting from a contract are usually created at the same time as the contract itself.

    - General governing considerations are the degree of surprise and unfairness to the claimant of either recognizing or not recognizing the vested right (public policy); for instance, if there has been detrimental reliance on the right, this is a compelling factor.

- *Gustavson Drilling (1964) Ltd. v. M.N.R.* (SCC 1977)

    - Statutes do not have retroactive operation unless such construction is expressly or by necessary implication required by the language of the act.

    - Retroactive - alters the rights of a past time; reaches into the past and declares that the law or the rights of parties at an earlier date were different.

    - Should not be given a construction that would impair existing rights as regards person or property absent clear intention and language which requires such a construction.

    - Most statutes, by nature, will interfere with antecedent rights; no one has a vested right in the continuance of the law as it stood in the past. Law will change as society does.

    - Right existing in members of the community at the date of the repeal of legislation to take advantage of that legislation is not an accrued right (abstract, contingent, potential)

- *MacKenzie v. British Columbia (Commissioner of Teachers' Pensions)* (BCCA 1992)

    - Applying legislation retroactively to give Plf. the benefit of new legislation, with no drawbacks, would cause the pension plan to be underfunded; public policy concern.

    - Consistency with the scheme/object of the Act is a necessary component of rebutting the presumption against retroactive application.

        - Act is "retroactive to the extent necessary to give effect to its provisions". To apply it retroactively in the manner suggested by the Plf. would contravene this provision, as this would cause the plan to be underfunded, and destroy the system that the law creates.

    - Retroactive statute is one that changes the law as of the time prior to its enactment (changes past consequences for past act).

    - Retrospective statute is one that adds new consequences to an event that occurred prior to its enactment (changes future consequences for past act)

    - If there is any doubt concerning intention of legislature, then statutes should not be given a retroactive application, or retrospective application which interferes with vested rights.

    - Onus is on the claimant to demonstrate that the legislation in question was intended to apply retroactively / retrospectively.

- *Scott v. College of Physicians and Surgeons of Saskatchewan* (SKCA 1992)

    - Where an enactment is repealed, this does not affect any right, privilege, obligation, etc. acquired/accrued/accruing/incurred under the enactment which has been repealed.

    - Accruing has been interpreted very *narrowly*. Accruing rights and obligations are those which will inevitably accrue, and not those which will *potentially* accrue. Probably, possibly, potentially - not sufficient for *accruing*.

    - Mere potential to take advantage of a statute is not sufficient to constitute an accruing right; that it was there to be had does not meant that it was accruing.

    - ITC, the right had moved beyond the abstract; steps taken on both sides which brought the matter so near to fruition so as to make it substantially certain.

    - But for the actions of the D. (delayed Plf.'s action due to excessive costs) the Plf.'s action would have fallen under the old statute.

- Obligation had not accrued as of the date of repeal; however, it was in the process of being fulfilled; therefore, it was under an accruing obligation, which is sufficient.

- *R. v. Puskas* (SCC 1998)

    - Facts:

        - T1 - *CCC* holds that appeal to SCC as a right, where acquittal or a stay of proceedings overturned at appeal Court, new trial is ordered, no leave application required.

        - T2 - Puskas' trial decision.

        - T3 - *CCC* is amended, appeals as a right under these circumstances are abolished and require leave thereafter.

        - T4 - Puskas' acquittal overturned.

    - Issue

        - Given that the right to appeal was repealed before D.'s acquittal overturned, does the D. still have the right to appeal without leave to the SCC?

    - Rule

        - D. cannot rely on law previous to appeal, as right did not begin accruing or accrue until the CA made its decision.

    - Principles

        - No accrued or accruing right to appeal until the CA has actually made its decision. The CA decision (T4) occurred after the amendment, and therefore the D. can not avail himself of the law previous to the amendment.

        - *Accruing has been interpreted very narrowly.* Rights are not accrued or accruing where they are not certain; ITC, as the CA had not yet made a decision, cannot be said that this right was certain.

        - Right to appeal is *substantive*, not merely *procedural*. The procedural exemption to presumption against retrospective application does not apply; ergo, in circumstances involving appeal, presumption against retrospectivity applies. However, it must be *certain* that the right has accrued, the defect ITC.

- *Baker v. Canada (Minister of Citizenship)* (SCC 1999)

    - Majority

        - International law and convention, where ratified by Canada, is an important consideration as it relates to the nature of the interests being served.

        - In this case, a convention reveals the interests, needs, and rights which are central to determining reasonable exercise of the power of a government agent.

    - Dissent (Iacobucci)

        - Holds that ratified international conventions have no force or effect except for where they are separately enacted into Canadian law via recognized means.

        - To do otherwise would be to upset the balance between the legislative and executive branches; grants the executive means to enact law through ratification

        - Holds that international conventions are irrelevant even in statutory interpretation until such provisions are subject of legislation by Parliament.

            - POLICY - This is probably not the case. Certainly, international conventions cannot be considered to be determinative, but they clearly show the intent or direction of the government concerning overarching policy issues. Where this is relevant and instructive to interpretation of statute, it should be considered. However, I do agree that a convention merely ratified cannot be considered a binding or central component in the operation of law.

- *Guzman v. Minister of Citizenship and Immigration* (FC 2005)

    - Facts

        - Guzman immigrates to Canada, claims to have only one dependent, in fact had three dependants. After becoming a citizen, Guzman applies to sponsor her other two dependants for citizenship; denied, as this was prohibited by regulation enacted under the *Immigration and Refugee Protection Act*. Challenged the regulation as being *UV* the Act, having exceeded bounds of enabling clause.

    - Issue

        - Is paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations UV* the *Immigration and Refugee Protection Act?*

    - Principles

- Analysis concerning whether subordinate legislation is *IV* or *UV* the Act. Regulations rarely found invalid, as grants of power tend to be broad.

    - *Nature of enabling act* - determine the nature of the enabling Act; is it framework legislation (broad, general powers conferred), or rather does the enabling legislation on its own constitute a complex and comprehensive attempt to manage the subject matter?

        - ALSO, is the Act concise? Does it deal with complex, wide-reaching subject matter in a broad, high-level sense? Does the Act leave crucial details to subordinate legis? Does subject require fast response to social developments?

        - ALSO, if so, framework; big discretion in subordinate regs. If not, comprehensive, lesser subordinate discretion.

    - *Nature of enabling clause* - determine the nature of the enabling clause; whether there are significant or, alternately, relatively minor limits concerning enactment of subordinate legislation.

        - ALSO, if there are only minor limits, framework; big discretion in subordinate regs. If considerable limits, comprehensive, lesser subordinate discretion.

    - *Nature of conflict* - determine the nature of the conflict, if any, between the regulation and its enabling Act. Generally, will only invalidate regulations where there is an express conflict.

        - ALSO, will not invalidate regulation merely on basis of merits or wisdom of legislation.

        - ALSO, will not invalidate regs. merely on basis that it takes into consideration both relevant and irrelevant factors.

- *Federated Anti-Poverty Groups of B.C. v. B.C.(Minister of Social Services*) (BCSC 1996)

    - Facts

        - Attempts to invalidate regulation under *Guaranteed Available Income for Need Act* of BC; reg. holds that relief only available to those with 90 days of residency in province. Challenged B.C. Reg. 462/95 as *UV* the enabling Act.

    - Issue

        - Is B.C. Reg. 462/95 *IV* the *GAIN* Act?

- Rule

    - Yeppers.

- Principles

    - *Ultra vires* - provision of four grounds under which subordinate legislation can be considered *UV* its enabling act.

        - *LG-in-Council* - where appropriate, regs. must be within the powers of the LG delegated by the enabling Act.

        - *Statutory purpose* - regs. must be consistent with the statutory purpose of the enabling Act.

        - *Authorization* - regs. must not be discriminatory (although this is more of a *Charter* issue), and further must be authorized by enabling act.

        - *Repugnancy* - regs. must not be repugnant to the provisions of other PG legislation (eg. *Human Rights Act*).

    - Regulatory power can be delegated expressly, or by necessary implication.

    - Power to enact legislation which interferes with or alters its enabling statute cannot be delegated by implication, but only expressly (King Henry VIII).

    - *Driedger* - to determine purpose of Act in view of whether subordinate legis *UV,* requires determination of meaning, which in turn requires a contextual analysis.

        - ITC, nothing in the context of the Act enables eligibility to be limited in concerning residency (although the power is broad, perhaps unlimited?).

    - Not within the power of the LGIC to exclude resident from the effects of any statute by regulation unless there is express intention or necessary implication.

- *Re: Gray* (SCC 1918)

    - FACTS: Challenge to a King Henry VIII clause in the *Military Service Act* during WWI. The GIC repealed an exemption for agricultural workers, an action which was challenged as *UV* the GIC.

    - Principles

        - King Henry VIII clauses do not constitute an abdication of legislative authority, as legislature could repeal enabling Act and subordinate legislation at any time.

- BUT, the decision in this case occurred in the context of war, and so it remains to be seen whether the matter will be treated similarly during peacetime.

- *Waddell v. GIC* (BCSC 1983)

  - FACTS: Act allows GIC to rescind / repeal terms and conditions of enabling Act (King Henry VIII clause), contained in Schedule III.

  - Principles

    - Schedules sometimes form part of the statute to which they are appended; this is the case if sufficiently incorporated into operation of Act, left as Schedules only for convenience in reading and understanding legislation.

      - for instance, if Act states that rights or obligations created by the Act are subject to terms and conditions in Schedule attached to that Act, implies that the schedule is incorporated into the Act.

    - *Donoughmore* - Where there is a King Henry VIII clause, can be presumed that legislature deliberately conferred powers to executive, and further had knowledge of nature and consequences of its actions.

      - BUT, this does not mean that this action is consistent with principles of parliamentary government; subordinate should not be able to alter legislation passed by the primary legislator.

    - *Donoughmore* - Proposes two limitations concerning the use of the King Henry VIII clauses:

      - Purposive - should never be used except for the purpose of bringing an Act into operation.

      - Limited - should be subject to a time limit of one year from the passage of the enabling Act.

    - *McRuer* - regulations made under a statute cannot amend the parent act without express authority. King Henry VIII clauses should not be adopted in Ontario, with smaller body of legislation and less complicated legislative schemes.

      - BUT, development of society within purview of both PG and Fed legislatures implies that society now more complex, perhaps clauses now desirable in accordance with *McRuer* criteria.

    - Legislatures can employ KH8 clauses, constitutionally; perhaps it ought not, but this is irrelevant. This is not limited to times of war or emergency measures.