* denotes decision from lower court

1. Identify Interpretation Approach - determine apt approach, apply steps to each issue, begin by exhaustively dealing with all immediate, prima facie requirements relating to the relation between the legislation and the facts at hand; show how the statutory framework fits the fact pattern (*IRAC*). Issues identified through relevance to outcome of case, reference to breakdowns (#7). Dispense with superficial issues, then deal with each profound issue in depth.

    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.}(10)

        i. BUT, insufficient analysis to interpret fully re: legis. intent. *Rizzo* {Terminated}(12)

    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. Interpretation can't be founded solely on text, must be read in entire context and in ordinary sense harmoniously with scheme of Act, object of Act, and intention of Parliament. *Rizzo* {Terminated}(12)

        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}(12)

        iii. ALSO, ultimate purpose to determine legislative intent. *Rizzo* {Terminated}(12)

        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 would believe a word/statute to mean, within context of intended audience of legislation. Presumes words not used in unusual or technical way, although legal words retain technical meaning. *Merk* {Whistle}(16)

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}(21)*

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

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}(16)

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}(16).

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}(20)*

v. *Situation / reasonable person* - can determine ordinary meaning by imagining subject matter in ordinary situation; what reasonable person thinks. *Shaklee* {Vitamins}(20)*

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}(20)*

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} (18)

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} (20)*. Courts obliged to consider all such sources where admissible. *McIntosh* *dissent* {Init. Aggr.}(10)

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} (20)*

iv.Artful text selection / Co-text - Courts can select which text to interpret, thus altering the outcome of the interpretation; includes amount of co-text; increasing co-text necessarily limits ultimate interpretation, 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 - be aware of whether lists of items are denoted by the word "means" (exhaustive, complete) verses includes (inexhaustive, possibly incomplete). Inexhaustive lists include all enumerations plus the ordinary meaning. *Kodar*

vii.Bijural - text must be able to have the same meaning, stand for the same thing in both common and civil jurisdiction (eg. assault different in torts than in Criminal Code).

viii.Language - 1. *Shared meaning* - if one meaning shared by both languages, and consistent with ambit of the statute, this meaning will be preferred 2. *Restricted interpretation* - if no shared meaning or such meaning inconsistent with ambit of statute, then narrower and more restrictive meaning is preferred. *3000* {Airplane} (18)

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}(16)

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

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

b. 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. Only "criminal" where there is accused, although taxation also strict construction (financially penal) *Merk* {Whistle}(16)

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)

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

i. Ambiguous - certain statutes 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}(16)

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

4. Harmonious w/ Object of the Act - attempt to identify the wrong being addressed, and interpret the act so as to best achieve remedy. *Sharpe* {Pornography} (14). *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. Analyze Sullivan framework (if applicable).

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

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

   c. *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.

   d. *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.

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} (14)

b. Legislative history - used in formation of self-defence in *Criminal Code* in *McIntosh* {Init. Aggr.}(10), advancement of legislation over time. *Merk* {Whistle}(16)

i. 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}(22)*.

i. ALSO, modern statutes use short titles. Historically, provided long & short titles; however, only Fed. still does this. Both valid for interp. *Committee* {Political}(22).

ii. BUT, weight similar to preamble. Limited utility due to brevity. *Lane* {Slots}(22)*.

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. *re Inflation* (23)

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. *re Inflation* (23)

f. *Marginal notes* - used in *McIntosh*, intent of legislation was to extend stricter defence only to those who were not initial aggressors. *McIntosh* {Init. Aggr.}(10)

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

Extrinsic Sources

g. *Context* - Must consider condition of things existent at time of enactment; part of understanding the legislative intent. More weight than others. *3000* {Airplane} (18)

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))

h. *Public policy* - academia, jurisprudence and legislation from other jurisdictions, should be considered to determine intent of legislature. *Merk* {Whistle}(16)

i. ALSO, should be afforded more weight when dealing with issues of great import, eg. protecting children vs. free speech. *Sharpe* {Porn} (14)

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

i. *Jurisprudence* - other decisions at common law involving interpretations. Must ensure that these decisions dealt with same version of act. *Rizzo* {Terminated}(12)

j. *Hansard* - debate, statements by Ministers, prominent in *Rizzo* where Minister said that protections extended to bankruptcy circumstances. *Rizzo* {Terminated}(12)

i. BUT, this is only reflective of what was *said*, and not actual intention of incorporeal body. Ergo, of limited weight. *Sullivan*

9. PRESUMPTIONS - each step of Driedger approach should take into account presumptions below. These presumptions can be rebutted w/ evidence. *Sharpe* {Porn} (14)

a. Effectivity - legislation is deemed well drafted, express *completely* legislature's intent. Cannot read in words, and each word must be given meaning. *McIntosh* {Init. Aggr.}(10)

i. ALSO, where meaning not provided expressly, must be interpreted. *Sharpe* {Porn} (14)

ii. ALSO, legislatures do not engage in tautology; every presented concept must be considered a discrete entity (eg. "vital" &"necessary" not the same) *Merk* {Whistle}(16)

iii. BUT, there may be drafting errors in legislation; Courts must remedy these. Difference between poorly conceived (parl) and poorly drafted laws. *McIntosh* {Init. Aggr.}(10)

b. *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.}(10)

iv. BUT, legislature doesn't attempt to produce absurdity, but desirable outcomes; cannot be unreasonable, incompatible, render futile the ambit of legis. *Rizzo* {Terminated}(12)

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}(16)

c. *Harmony* - *Driedger* approach presumes that statutes dealing with the same subject matter will be harmonious, between Acts, etc. *3000* {Airplane} (18)

d. 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} (14)

e. Practicality - empowering legislation should not rest on impossible premises, eg. cannot always factually establish intent of offender. Must be pragmatic. *Sharpe* {Porn} (14)

f. *Consistency* - Approach for interpretation must lead to a consistent meaning for the law; objective standard can aid with this task. *Sharpe* {Porn} (14)

g. *Plausibility* - interpretation should not generate a meaning which is the text is not capable of bearing in the ordinary sense. *McIntosh* {Init. Aggr.}(10)

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

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

d. *Tense* - always "always speaking", considered norm of current legal system, not historical. *BCIA* (s.7(1)) Expressed in present tense, law applies to circumstances 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 protection of 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))

11.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

    - 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.

- *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.