

Application of SI Principles to Case Law

Case	Issue/Conclusion	Application of Principles
<p><i>R. v. McIntosh</i> (1995, SCC) Lamar C.J. (majority) pp. 3-10-3-18</p>	<p>Is s. 34.2 (CC) re: self defense available to an initial aggressor?</p> <p>Yes - plain meaning is clear; no ambiguity; penal provision - strict construction</p>	<p>Applies 'Golden Rule'; sees no ambiguity (3-12-3-13) Contextual approach not appropriate - can't determine leg. intent from confusing CC; intent should be seen in their actions (just as in other jurisdictions) (3-13) If it was ambiguous, then:</p> <ol style="list-style-type: none"> 1) penal provision --> strict construction (3-16) 2) legislative intent --> institutional roles (courts can't amend); people need to know the code 3) absurdity only applies when ambiguous; leg. has the right to be illogical (democratic governance; PS) (3-15-3-16)
<p><i>R. v. McIntosh</i> (1995, SCC) McLachlin J. (dissent) pp. 3-18-3-23</p>	<p>Is s. 34.2 (CC) re: self defense available to an initial aggressor?</p> <p>No - provision is ambiguous (scheme analysis); contextual approach reveals a drafting oversight (leg. history); role of court to correct/avoid absurdity (consequentialist reasoning/policy)</p>	<p>Point of departure is Parliamentary intent not plain meaning/Driedger (3-19) Strict construction of penal provisions only applies when leg. intent can't be determined (3-19) Contextual approach:</p> <ol style="list-style-type: none"> 1) legislative history --> common law distinction between justified/unjustified homicide (3-20) 2) marginal notes/1955 changes - root of the inadvertent omission (3-21) 3) institutional roles --> allowed to redraft: manifest absurdity; traceable error; obvious correction (3-22) 4) absurdity principle --> must presume rationality/policy considerations wouldn't allow greater leniency for more serious aggressors (3-22)

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<p><i>Re Rizzo & Rizzo Shoes</i> (1998, SCC) Iacobucci J. pp. 3-29-3-37</p>	<p>When bankruptcy occurs can employees be said to be terminated by the employer (and therefore be entitled to termination/severance pay)?</p> <p>Yes - contextual analysis supports conclusion (3-37, para. 40-41)</p>	<p>Rejects PMR as incomplete (3-32, para. 21) Applies Driedger (common law) & BCIA, s. 8 - remedial; liberal construction (3-32, para. 21-22) (also references <i>BCIA</i>, s. 37 - subsequent amendments to leg. (3-37, para. 42)) Scheme (purpose) analysis - object of <i>ESA</i> is benefits-conferring (3-33, para. 24-25; 3-26, para. 36-38) Previous jurisprudence supports interpretation of intent - <i>Machinter v. HOJ Industries</i>; <i>R. v. TNT</i> (3-32, para. 24-26) Absurdity principle - interpretation of CA would defeat the purpose of the statute; would benefits employees with less seniority (3-34, para. 27-29) Legislative history - transitional provision of the <i>Bankruptcy Act</i> (3-34, para. 30-33) Parliamentary intent - Hansard; weak but relevant (3-35, para. 34)</p>
<p><i>R. v. Sharp</i> (2001, SCC) McLachlin C.J. pp. 3-23-3-29</p>	<p>Do Canada's child pornography laws unjustifiably intrude on the constitutional right of freedom of expression?</p> <p>No - contextual analysis/ Parliamentary intent provides that the law is constitutional (two peripheral applications/ two exceptions can be read into the legislation)</p>	<p>Applies Driedger; presumes intent is constitutional (3-23, para. 33) Parliamentary debate --> Hansard (3-25, para. 34) Scheme analysis of words in provision (3-26-3-29) - words are read within the context of the intent of the provision</p>

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<p><i>Merk v. ...Iron Workers</i> (2005, SCC) Binnie J. pp. 3-38-3-47</p>	<p>Labour Standards Act, s. 74: Does “lawful authority” permit a whistleblower to report prohibited activity to someone inside the organization?</p> <p>No - “authority” can be someone either inside or outside (plain meaning); “lawful” is anyone who can take steps to stop the unlawful activity (ordinary meaning; liberal construction); contextual analysis supports employees taking an “up the ladder” approach.</p> <p><u>Note</u>: Dissent (Deschamps J.) applies plain meaning - “lawful authority” = someone with the authority to enforce statutes.</p>	<p>Social context/policy - general principles of labour relations balance employee’s duty of loyalty with public interest in whistleblowing (3-40, para. 16; 3-42, para. 23) Applies Sask-IA, s. 10 - remedial/liberal construction & Driedger (3-40, para. 17-18)</p> <p>Ordinary meaning - permits a broad interpretation “lawful” - stop activity; “authority” inside or outside (3-41, para. 19)</p> <p>Scheme analysis - benefits conferring legislation; Hansard (3.41, para. 20-21)</p> <p>Purpose analysis - balancing loyalty & public interest; case law (3-42, para. 23-24)</p> <p>Public policy/anomalous results - supported by other jurisdictions (federal, international, labour relations field); narrow view would treat ‘disloyal’ employees better- irrational - <i>R.v. Wust</i> (3-43, para. 25-27)</p> <p>Legislative history - Sask. CA viewed changes as “incremental step” (earlier clause limited the scope); SCC disagrees - broader legislative reform (3-44, para. 30-31)</p> <p>Penal principle - regulatory (not penal); limited scope of application of penal principle since <i>McIntosh</i>; other interpretive factors - purpose - weigh more heavily (3-45, para. 32-35)</p> <p><u>Note</u>: Section C (3-46, para. 39-41) points out that the Interpretation Act does not allow subsequent revisions to be used in inferring intent.</p>

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<p><i>Canada 3000 Inc.</i> (2006, SCC) Binnie J. pp. 3-47-3-54</p>	<p>Does “owner” (in the relevant Acts) include the legal titleholders of the aircrafts?</p> <p>No - contextual analysis favours a narrow interpretation of “owner” to exclude the legal titleholders.</p>	<p>Applies Driedger; references <i>Heydon’s Case</i> (3-49, para. 36)</p> <p>Social context - airline industry; commercial context (3-49, para. 37-39)</p> <p>Purpose in context - consequentialist reasoning - broad interpretation would trigger further crisis; would be absurd to make the title holders responsible for charges related to operations they didn’t participate in (3-51, para. 42)</p> <p>Scheme analysis re: meaning - must take entire context into consideration/rejects PMR (<i>Bell ExpressVu</i>) (3-51, para. 44); meaning of “includes” is exhaustive:</p> <ol style="list-style-type: none"> 1) shared meaning with the French words (para. 49) 2) consistent with the intent of the scheme and its legislative history (para. 50); Hansard & Aeronautics Act (3-54, para. 56-59) 3) consistent with Parliament’s intent to limit scope of liability to users (para. 51); consistent with the broader regulatory framework for the industry (3-53, para. 54-55); and internationally (para. 56)
<p><i>Shaklee v. Canada</i></p>	<p>Re: Ordinary Meaning</p>	<p>Dictionaries are of limited use (4-3, para. 10)</p> <p>Reasonable person re: plausible meaning</p>
<p><i>Regina v. Riddell</i></p>	<p>Re: Definitions</p>	<p>Statute has no definition; dictionaries don’t resolve the matter</p> <p>Rule of Effectivity - every word in a statute is there for a reason and has a meaning (quote on p. 4-6/final para.)</p>
<p><i>R. v. Lane</i></p>	<p>Re: Titles</p>	<p>Considered part of the Act but not determinative</p> <p>Given little weight (4-14)</p>
<p><i>Commonwealth</i></p>	<p>Re: Titles</p>	<p>Given more weight; consideration to French version (4-16)</p> <p>Scheme analysis (4-17, para. 36)</p>

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<i>Re SFU and District of Burnaby</i>	Re: Legislative Evolution (declaratory vs. substantive amendments)	BCIA. s. 37(2) - amendments are not determinative of substantive change (look for textual/contextual clues) *this provision is not absolute - contextual approach may reveal that different words = different intent Controversial 'test' from case law - if there was ambiguity in the previous version and the change was one the courts could have come up with on their own (then declaratory)
<i>Reference re: Firearms Act</i>	Re: Legislative History	Will be considered as long as it relevant & reliable - should not be given endue weight (text speaks louder)
<i>R. v. Ulybel; Bell ExpressVu v. Rex</i>	Re: Horizontal Coherence/ Presumption of Consistency	"...the principle of interpretation that presumes a harmony, coherence , and consistency between statutes dealing with the same subject matter" (p. 4-52)
<i>Levis (City) v. Fraternite de Policiers</i>	Re: Horizontal Coherence/ Presumption of Consistency	Presumption of Consistency - legislature is presumed to be a unified entity; consistent body of work; especially when dealing with the same subject matter ("pari materia") General rule in favour of finding consistency; if there's conflict - look to specificity & timing
<i>Commonwealth; Sharpe; Bell ExpressVu</i>	Re: Vertical Coherence/ Charter values rule	Integrated approach (presumption of coherence with <i>Charter</i> values) - <i>Commonwealth; Sharpe</i> Straight-forward approach (greater respect for institutional roles); nod to this approach in <i>Bell ExpressVu</i> (p. 4-61) - only receives application in the case of ambiguity as to the meaning of a provision (p. 4-84)
<i>Symes v. Canada</i>	Re: Restriction of the <i>Charter</i> values rule	Must be able to apply (not only consult) the <i>Charter</i> (p. 4-86)

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<i>Baker v. Canada</i>	Re: International Instruments	International treaties and conventions are not part of Canadian law unless they have been implemented by statute (p. 4-64) Preference for interpretations that presume to respect the values/principles enshrined in international law (dissent - proceed with caution, p. 4-65)
<i>McDiarmid Lumber v. God's Lake First Nation</i>	Re: Principle of Associated Meaning & Rule of Effectivity	Principle of Associated Meaning - meaning of a term is revealed by association with other terms - may result in a narrowing effect (<i>Mitchell</i>) Rule of Effectivity - every word is presumed to make sense and have a role in advancing the legislative purpose (p. 4-74)
<i>Nanaimo (City) v. Rascal Trucking</i>	Re: <i>Ejusdem Generis</i> Principle (re: basket clauses)	The general phrase/ basket clause will take its meaning from the specific words that precede it - inevitable result is that the meaning of the general phrase will be narrowed
<i>C.R. et al v. Children's Aid Society of Hamilton</i>	Re: <i>Expressio Unius</i> Principle	Express mention of one thing excludes all others by necessary implication Legislative silence is not always indicative of intent to exclude - i.e. "responsibilities" not expressly <i>excluded</i> so may be deemed to be included (result: "rights" implies "rights and responsibilities")
<i>Schwartz v. Canada</i>	Re: Uniformity of Expression	Words used by Parliament are deemed to have the same meaning throughout the same statute unless there is a contrary intention Different words deemed to have different meanings

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<i>School District No. 44 (North Vancouver) v. Jubran</i>	Re: Human Rights Statutes	Quasi-constitutional status and should be interpreted in a broad purposive manner that achieves the remedial objects of the legislation
<i>Ludco Enterprises Ltd. v. Canada; Imperial Oil Ltd. v. Canada</i>	Re: Taxation Statutes	Varying approaches - shift from narrow interpretation to more cautious approach Complex structures - refrain from judicial innovation; need for reliance by taxpayers
<i>MacKenzie v. BC (Commissioner of Teachers' Pensions)</i>	Re: Presumption Against Retroactivity	No expressed rebuttal of the presumption against retroactivity ; supported by legislative history; consequentialist reasoning
<i>Gustavson Drilling Ltd. v. M.N.R.</i>	Re: Temporality & Vested Rights	Not a retroactive application The law changes - no vested right to continuance of the law as it was; the mere existence of a right at the time of repeal is not a right accrued
<i>Scott v. College of Physicians and Surgeons of Saskatchewan</i>	Re: Presumption Against Interference with Vested Rights	Vested rights are accrued or accruing - requires entitlement, intention & inevitability (p. 5-24/25) BCIA, s. 35(c) & 36 (c)
<i>De Guzman; Federated Anti-Poverty Groups of BC</i>	Re: Lawful Authorization of Subordinate Legislation	Deference to legislative intent - contextual approach to determining expressed (or implied) authority to delegate responsibility for law-making
<i>Waddell; Gray</i>	Re: Henry the VIII Clauses & Parliamentary Supremacy	Discussion of criticism re: abdication of parliamentary accountability (delegation found to be authorized)

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