

LAW, LEGISLATION & POLICY
SECTION 2 - M. DEHKA
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JAMIE MYRAH

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Branches of Government

	LEGISLATIVE	EXECUTIVE	JUDICIAL
<u>Role & Function:</u>	Make laws (statutes) Drafts, debates & votes	Implement/ administer laws Make laws (primarily sub-ordinate/ regulatory)	Interpret/apply laws Make laws (common law - case law/jurisprudence)
<u>Structure & Positions:</u> <i>Note: Privy Council</i> - all members of past/present cabinets - the "Crown's advisors" - power exercised by the current cabinet/P.M.	Monarch - G.G. (Royal Assent) Parliament Senate (unelected) House of Commons (elected) ----- Monarch - L.G. (Royal Assent) Legislature	Monarch - G.G./L.G. P.M. / Premier *Cabinet Ministers Committees Bureaucracy ---->> (civil service)	Monarch (appointments) <u>*Court Systems:</u> Supreme Court of Canada Federal / Provincial Courts (Administrative Bodies) **not courts
<u>Accountability:</u>	"The People" (elections) <u>Note:</u> 'statist' tradition/culture - deference to government (relatively strong political executive); participation limited to elections (Philip Resnick, <i>Parliament vs. People</i>)	Legislative Branch	Rule of Law - constitution, etc. One another - disciplinary committees <u>Note:</u> the legislative branch can 'talk back' to the judicial branch through legislation as long as it's constitutional (exception: notwithstanding clause)
<u>Powers Limited By:</u>	Constitution (federalism/Charter/ Section 35)	Constitution (federalism/Charter/ Section 35)	Constitution (federalism/Charter/ Section 35)

	LEGISLATIVE	EXECUTIVE	JUDICIAL
<u>Principles:</u>	Separation of Powers Democratic Government Parliamentary Sovereignty vs. Constitutional Supremacy (esp. since the Charter)	Separations of Powers Responsible Government Ministerial Responsibility	Separation of Powers Judicial Independence
<u>Institutional Expertise:</u>	Balance multiple interests Appease different constituents	Drafting/ implementing policy	Best at two-party disputes with simple facts rather than policy

*Court Systems:

Federal Court of Appeal -- Federal Court Trial Division

Provincial Appellate (BC Court of Appeal) -- Superior/Supreme Court -- Provincial Courts

Principles

Responsible Government - P.M. & Cabinet require the confidence of the House of Commons; part of the “living constitution”

- defeat on important legislation (i.e. budget, government spending) or a motion of no confidence (by opposition party) = less of right to govern
- part discipline - MPs of a party generally vote as a block
- *rights of the legislature* - scrutinize, debate, vote on proposed policies, question the government, demand explanations, etc.
- corresponding *obligations of government* - provide opportunities for scrutiny, account for its action before Parliament
 - *standing orders* - codification of these rights & obligations; rules that govern parliamentary procedure

Ministerial Responsibility - obligation of a cabinet minister to explain/defend policies carried out in their name

- constitutional law & parliamentary tradition

- Section 54, CA, 1867 - gives exclusive right of cabinet to introduce measures re: raising/spending public revenue
 - requirement that legislation must originate in the elected House of Commons - “no taxation without representation”
- combines *strong executive authority & democratic accountability*
 - MPs (particularly Ministers) must remain directly accountable for policy & major decisions (power of which is often passed to unelected officials)

Parliamentary Supremacy - Parliament’s authority is superior to that of all other institutions of government

- courts will not second guess Parliament’s right to pass any law - they are the embodiment of “popular will”
- federal and provincial governments are supreme as long as they act within the spheres of constitutional authority (federalism)

Constitutional Supremacy - has replaced Parliamentary Supremacy (unless no Charter or other constitutionally protected right is at issue and division of powers is respected)

- Charter - applies to both federal & provincial governments and all matters under their authority
- Section 52(1) (C.A. 1982) - “The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”
 - Charter, Section 33 - “notwithstanding clause” - also laws violating rights & freedoms to operate temporarily (max. 5 years)
- courts have become important venues for the resolution of political issues; some groups may no bypass electoral/legislative politics (p. 1-9)
 - not necessarily more democratic/accessible than other forums for politics

Judicial Independence - judges are to be free from any and all interference in their decision making

- role of the judiciary is largely based on constitutional convention and statute law

Separation of Powers - guarantees the special role of the judiciary to interpret the law and the meaning of the Constitution when disputes arise

- relies on cultural norms, statute law & constitutional conventions (more than constitutional law)
- Section 24 (C.A. 1982) - enforcement of the *Charter* shall be through the courts (check on the powers of Parliament/legislatures)

Legislative Process

Goal: to give legal effect to government policy in a form that clearly communicates the policy to those required to obey it and those required to administer it (p. 1-29)

Stage 1 - Creation of Legislative Policy

- *Policy Development* - usually by ministry responsible for administration
 - information gathering/assessment
 - planning context - budgets, strategic plans, ministry service plans
- *Request for Legislation (RFL)* - formal cabinet submission
 - established by the Cabinet Operations Office
 - analyzes the problem; proposes solution/potential impacts
- *Policy Review Document (Three Column Document)* - high-level policy overview of the proposal (primary audience - Cabinet committees)
 - describes current legislative situation
 - describes proposed change
 - provide's reasons for the change
- *Drafting Instructions* - details of the scheme
- *Treasury Board Staff & Legislative Counsel Comments* - attached to RFL when submitted to Cabinet
 - anticipated financial impact
 - drafting considerations
- *Ministry Solicitor* - RFL prepared in consultation with appropriate ministry solicitor
 - knowledgeable of ministry business & legal issues
 - advise re: legal process, legal analysis, policy intentions
- *RFL Approval Process* - signed by Deputy Minister; submitted to Cabinet for review & approval
 - review by Cabinet operations
 - meeting between Minister & House Leader
 - meeting between House Leader & Cabinet - determine how to proceed/ prioritization of drafting process
- *Government Caucus Committee (GCC) Review* - either 'Natural Resources & Economy' or 'Social Development'
 - make policy recommendations; may require modifications

Stage 2 - Drafting the Legislation

- *Drafting Team* - ministry's instructing officer, ministry solicitor, assigned Legislative Counsel
 - *Instructing Officers* - aka 'policy analysts'; link between the sponsoring ministry and the legislative drafter
 - *Ministry Solicitor* - brings significant expertise (see above)
 - *Legislative Counsel* - assigned drafter transforms policy into legislative form; must balance government's goals with need to maintain coherent/consistent

legislation; applies the technical skills of statutory interpretation to help ensure that if the legislation goes to adjudication the interpretation will reflect the desired policy

- assisted by legislative editors, publications staff (Office of Legislative Counsel)
- *Final Policy Review* - may return to GCC to review new policy issues, etc.
- *Final Review of Draft Legislation* - Certificate of Readiness signed by sponsoring minister/delegate
 - Legislative Counsel provides draft to Cabinet Operations
 - sponsoring minister provides briefing note & section notes to Cabinet Operations
 - draft is reviewed by Legislative Review Committee (Cabinet ministers & MLAs)
- *Bill Preparation* - Office of Legislative Counsel prepares final Bill form
 - signed by Premier & L.G.; printed by Queen's Printer
 - coordination of First Reading by Government House Leader in consultation with Premier's Office & sponsoring minister
- *Special Budget Legislation Process* - for proposals to be introduced with annual Budget
 - initiated by Minister of Finance
 - reviewed & finalized by Treasury Board Staff
 - provide drafting instructions to Legislative Counsel with no RFL
 - draft is reviewed by ministry staff, Cabinet Operations, Legislative Counsel

Stage 3 - Enactment of a Law

- *Types of Bills*
 - *Public* - propose changes to the general law of the Province
 - *Government Bills* - implement government policy; drafted by Legislative Counsel (Bill 2-200)
 - *Member's Bills* - prepared by/for individual MLA (usually Opposition); no assistance from Legislative Counsel; constitutional restrictions (Bill M 201 - 400)
 - *Private* - limited in their application to particular individuals or organizations; provide additional power/benefits or relieve them from application of the general law
 - come to Legislative Assembly through a petition process under Standing Orders; proceed through special committee process (Bill Pr 401...)
- *Government Bills & Legislative Process*
 - *First Reading* - minister makes very brief general statement of intent; presentation only
 - *Second Reading* - debate of the general intent (not specifics of sections)
 - *Committee Stage* - "Committee of the Whole" (full Assembly without Speaker) - section-by-section debate; concludes with vote on Bill's title
 - each section is subject to separate debate & vote
 - House Amendments can be proposed; certain amendments may be ruled out of order

- *Report Bill* - legislative “track changes”; shows accepted amendments using revision marking conventions
- *Third Reading* - vote resulting in recommitment (returned to Committee stage) or Royal Assent
- *Royal Assent* - when a Bill becomes part of BC law; given by the L.G. (through a nod)
 - Third Reading form becomes the statute
- *Commencement* - legal effect begins when the Act “comes into force”; specified in last section of an Act
 - date of Royal Assent (*Interpretation Act*) unless otherwise indicated
 - may be retroactive
- *Bill 1 - Special Case*
 - *An Act to Ensure the Supremacy of Parliament*
 - introduce of the Attorney General at the start of each Legislative Assembly
 - does not proceed past First Reading
 - purpose: to perpetuate the established right of Parliament, through its elected representatives, to sit and act without leave from the Crown (p. 1-42)

Note Re: Federal Legislative Process: see flowchart (p. 1-47)

- guided by the principles & general directions provided by the Office of the Privy Council
- constrained by constitutional considerations (i.e. division of powers, rule of law, Charter, Aboriginal and treaty rights, language rights, etc.)
- all three elements of Parliament - Crown, Senate, House of Commons - must assent to a Bill (draft Act) for it to become law
- money bills must originate in the House of Commons; non-money bills may originate in the Senate
- minister must present a Memorandum to Cabinet (to show why the legislation is necessary for achieving policy objectives) for approval for the Bill to be drafted by the Legislation Section of the Department of Justice

Note Re: the Relationship between Acts & Regulations:

- Parliament creates Acts; through Acts authorizes regulations
- regulations must conform to the limits established by the authorizing Act
- most legislative schemes require regulations to make them work; this interdependence means they should be developed together to ensure compatibility
- Governor in Council - usually authorized to make regulations
 - rationale for departure can be provided in the Memorandum to Cabinet
- the bill should establish a framework that limits the scope of regulation-making powers to matters appropriate for subordinate law-making delegates/processes
 - must not be unnecessarily wide
 - specific drafting authority is required for certain powers (see p. 1-50)
- important that bilingual & bicultural drafting apply to all federal laws

Problem of Meaning

Sources of Communication Breakdown:

- *ambiguity*
 - traditional sense of equivocation - multiple meanings not clarified
 - syntactic ambiguities - where it is unclear within the context which terms are modified by an included word/phrase
 - contextual ambiguities - caused by factors outside the communication (i.e. cultural practices, diversity of experiences)
 - assumptions about meaning made by the speaker/writer & the audience (coordination problem - each assuming the other is using a particular meaning)
 - temporal gap - new circumstances may arise between when the communication is 'sent' and received
- *elliptical communications*
 - speakers/writers make assumptions about their audience and omit mention in their communications of factors that should be taken for granted; they assume the gap will be filled
- *improper bivalence*
 - assumptions of analysis according to bivalent (i.e. true/false) criteria; audience may experience a spectrum
- *over-inclusiveness*
 - classification used by the rule-maker may be too broad to meet aims; unclear when the rule will promote/jeopardize the aims
- *under-inclusiveness*
 - classification used by the rule-maker may be insufficiently general to meet aims
- *vagueness*
 - rule-maker may use general terms based on assumptions that the audience will use particular criteria to make them more specific
- *miscommunication*
 - mistakes - unintentional omission/inclusions; misuse of words/phrases

Statutory Interpretation

Overview of SI Approaches

Historical -

- *Heydon's Case* (1584) - four considerations for all statutes:
 - the common law before the statute
 - the mischief being addressed (that wasn't addressed by the common law)
 - the remedy provided by Parliament
 - the true reason of the remedy
 - construction by judges should: suppress the mischief & advance the remedy; add force & life to the remedy according to the true intent of the makers of the Act (p. 3-1)
- *strict vs. liberal construction*
 - strict - statutes which were penal or interfered with liberty or property rights of the subject (influenced by Locke, natural rights of man)
 - liberal - statutes which were remedial for the advancement of religion or for public benefit/utility
 - false dichotomy - 18th century became the era of strict construction
- *Sussex Peerage Case* (1844)
 - if words are precise and unambiguous - their meaning is their natural and ordinary sense
 - if there is doubt - determine intention through what caused the of making the statute
- *Grey v. Pearson* (1857)
 - grammatical and ordinary sense of the words should be adhered to unless it would lead to absurdity or inconsistency with the rest of the statute

Golden Rule - plain meaning rule - interpretation is founded on the wording of the legislation alone

Driedger's Modern Principle -

- "... the words of an Act are to be read in their 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."
 - goal of a contextual analysis - to determine meaning in the context of legislative intent

Overview of Interpretation "Rules"

Rules about Meaning -

- *ordinary meaning rule* - legislature intended to use language in its ordinary grammatical sense; ordinary meaning should prevail over strained or technical meanings

- ordinary meaning may give way to technical meaning for legislation that deals with a technical subject and is addressed to a specialized audience familiar with the subject
- *shared meaning rule* - presumption that the legislature intended the shared meaning in reading bilingual legislation (unless that meaning is unacceptable given legislative intent)
- *principle of complementarity* - federal legislation is supplemented by civil law in Quebec and the common law in the rest of Canada; must be away of both legal systems when interpreting bijural legislation
- *original meaning rule* - interpreters should adopt the meaning the legislation had at the time of enactment
- *plausible meaning rule* - interpretation adopted must be one that the language of the text can plausibly bear

Rules of Application -

- legislation doesn't apply extra-territorially
- legislation doesn't apply retroactively
- legislation doesn't interfere with vested rights
- legislation - in most jurisdictions - doesn't apply to the Crown or it's agents

Types of Analysis -

- *contextual analysis* - reads the text in regards to the Act as a whole along with the larger legal context (i.e. international law) and the 'external' context (i.e. social, political, economic & cultural conditions)
 - an interpretation that is consistent with context is preferred over one that is not (p. 3-6)
- *textual analysis* - reads the text in light of legislation's distinct literary conventions
- *purposive analysis* - reads the text in light of its purpose including the purpose of the whole Act and the provision being interpreted
- *consequential analysis* - interpret considers the effects likely to flow from adopting a proposed interpretation
 - accepted - interpretations that lead to beneficial consequences
 - rejected as absurd - those that lead to irrational, unjust, unacceptable consequences

Rules Based on Drafting Conventions -

- general convention: formal expository prose - grammatically correct sentences; lexicon and common sense of the education public
- examples of special conventions:
 - presentation of sentences in numbered sections
 - prohibition on tautology and stylistic variation
 - repealed use of the same words/structures to signal particular meaning
 - the consistent expression rule - same words, same meaning
 - binding obligation = "shall" or "must"
 - something must be done in accordance with the regulations = "prescribed"

Rules That Introduce Values into Interpretation -

- *presumptions of legislative intent* - interpreters should be slow to attribute meanings inconsistent with these presumptions
 - compliance with constitutional/international law and the values of the Charter
 - no intention to change the common law or violate Aboriginal rights
 - observation of the principles of fairness and natural justice
- *doctrine of strict construction* - legislation that interferes with individual rights and freedoms
- *doctrine of liberal construction* - legislation that confers benefits on subjects or advances social welfare

Rules That Permit Judges to Change the Text -

- *legislative intent* - distinguishes interpretation from amendment
- *interpretation* - uses different words to clarify what the legislature intended to say; may include adoption of a strained interpretation or correction of a legislative drafting error
- *amendment* - changes what the legislature intended to say
 - courts deny any jurisdiction to to expand the scope of legislation to fill gaps

Rules Governing the Use of Extrinsic Aids -

- *legislative source* - agreements the legislation is meant to implement; other legislation it's modeled on
- *legislative history* - materials brought to the attention of the legislature during the legislative process (e.g. Ministerial statements, committee reports, background material, records of debates, etc.)
- *legislative evolution* - successive amendments and reenactments from initial enactment until the time of application; subsequent evolution is not a legitimate aid
- *expert opinion* - precedent, administrative opinion, scholarly legal publications, expert testimony
 - the weight and admissibility of materials depends on relevancy and circumstances... always evolving

Rules Dealing with Overlap & Conflict -

- overlap (legislation-common law or two/more legislative provisions) is permitted in the absence of conflict
 - unless a provision(s) is believed to be intended to be exhaustive
- conflict between two/more applicable & binding rules is unacceptable
 - one or more may be "read down" - interpreted narrowly to avoid the conflict
 - or conflict is resolved through *rules of paramountcy* (hierarchies of law based on their source):
 - legislation paramount over common law
 - federal legislation paramount over provincial legislation
 - human rights legislation (Constitution & Charter) paramount over ordinary legislation
 - statutes paramount over regulations (usually)

Sullivan's Critique

Ruth Sullivan, *"The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation"*

	Plain Meaning	Legislative Intent
Method	<ul style="list-style-type: none"> • first impression meaning (spontaneously available through reading alone) • interpretation/contextual tools only applied when there's ambiguity (competent reader could plausibly read it more than one way) • judged by a competent reader 	<ul style="list-style-type: none"> • always starts with post-interpretation (no first impressions) • infer legislative intent through contextual analysis (textual - i.e. original or plain meaning rule & extra-textual - i.e. doctrine of presumed intent) • treats legislation as an ordinary speech act
Advantages	<ul style="list-style-type: none"> • certainty (public has fair notice) • formal equality (same law applied in the same way to the same effect for everyone) • reliance (proxy for strict construction; exercise of technical expertise) 	<ul style="list-style-type: none"> • makes courts look democratic (institutional roles - legislature is the only legitimate source of law) • positivism & certainty (laws as social rules enacted with authority) - rule of recognition: what the legislature enacts is law
Presumptions	<ul style="list-style-type: none"> • inherent meaning to words that is clear and certain • objectivity • court's first responsibility is to give effect to the apparent meaning of the text whenever its meaning is plain 	<ul style="list-style-type: none"> • discoverable legislative intentions • relies on linguistic/cultural conventions - assumes the speaker is aware of the context in which the audience will interpret the text ("cooperative interpreter")
Similarities	<p>static meaning (words don't evolve with society) discoverable meaning (fixed & certain) positivism ('mythology of western democracy' & 'rule of law heaven')</p>	

What does Sullivan see as cheating? Why do judges cheat?

- form of misrepresentation
- judges present as if their hands are tied rather than acknowledging the choices they have
 - plain meaning - “the text made me do it”
 - contextual approach - “the legislature made me do it”
- discourages judges from probing/discussing the real basis for their decisions
- allows them to avoid responsibility for outcomes
- provides reassuring rhetoric and justifies their work

Sullivan’s solution?

- judges should acknowledge their responsibility and attempt to explain/justify their choices
- don’t demand the impossible; acknowledge that legislative text and legislative intention are incomplete sources of law - interpretation (choice/discretion) is needed to complete the job
- focus on what we can reasonably expect from our interpreters
- democratically legitimate option
 - legitimate law is co-extensive with legislation made by elected representatives
 - democracy - government in accordance with a constitution; elected legislature is one of several necessary institutions
 - resolution of interpretation disputes by judges is a highly democratic exercise - allows the subject to participate directly in the law-making process by arguing about how particular rules should apply
 - instead of denying the role of context (by equating rule of law with the application of pre-fixed rules by a-political automatons) try to understand how it works and its implications
 - diversify judges to guard against bias
 - make judges accountable to the diversity of Canadian society (rather than dismissing different assumptions/interests/perspectives as bias or “special interest”
- reject the idea that this would mean that courts could do whatever they want
 - its possible for additions to/departures from legislative texts/rules to be justified in a legally acceptable way
 - legal justification is democratic & legitimate
 - the outcome is justified in a legally acceptable way if judges use techniques that are recognizably legal and appeals to plausible (not necessarily traditional) legal norms
 - free judges to do the work on interpretation - trying to understand the text and the intention; working out implications; adapting rules to varied/ changing circumstances; ensuring legal values (constitutional and from the evolving common law) are respected (p. 3-75)

PMR Tricks	FLI Tricks
<p><i>#1 Artful Text Selection</i></p> <ul style="list-style-type: none"> • identification of text-to-be-interpreted • alternative texts may favour different outcomes • judge may not explain basis for their choice (or acknowledge a choice has been made) • <i>R. v. McGraw</i> 	<p><i>#1 Presume That Nothing Worth Mentioning Has Changed</i></p> <ul style="list-style-type: none"> • if legislation is ordinary speech act (purposive attempt to communicate particular meaning) then meaning is fixed at time of enactment - faithfulness to intention requires discovering original meaning • lack resources; impossible to apply • current meaning is presumed to be the same as original meaning
<p><i>#2 Elastic Co-Text</i></p> <ul style="list-style-type: none"> • amount of surrounding text the reader uses to determine first impression meaning and whether it's plain • ranges from nothing at all to the entire section • size of co-text often affects meaning & judgements about ambiguity - the more you have the easier it is to narrow down the possible meanings of a text • <i>R. v. McIntosh; Ontario v. C.P. Ltd.</i> 	<p><i>#2 More Meaning Games</i></p> <ul style="list-style-type: none"> • original meaning as <i>connotation</i> (abstract/dictionary meaning) or <i>denotation</i> (facts to which the words were applied) • “original meaning” can provide significant choice • <i>Hills v. Canada</i>
<p><i>#3 Shifting Meaning Game</i></p> <ul style="list-style-type: none"> • shifting, inconsistent ways of referring to meaning: dictionary, literal intended, audience-based, applied, etc. • dictionary meaning may or may not be supplemented by other analysis (textual, contextual, purposive) • ensures significant discretion in determining first impression meaning 	<p><i>#3 Distinguish Sloppy Drafting From Legislative Error</i></p> <ul style="list-style-type: none"> • correcting errors attributed to the inattention or lack of skill of the drafter is acceptable - brings the legislation in line with the intended meaning • correcting errors/anomalies the legislature is responsible for is not acceptable - curing legislative oversight is amending and impermissible (separation of powers) • <i>R. v. McIntosh</i>

PMR Tricks	FLI Tricks
<p><i>#4 It Must Be Plain To You If It's Plain To Me</i></p> <ul style="list-style-type: none"> • distinguishing between plain & ambiguous meaning requires a judgement of whether a text can plausibly bear more than one meaning • this is a purely linguistic judgement; generally ignores empirical evidence of ambiguity • <i>Ontario v. C.P. Ltd.</i> 	<p><i>#4 Presume That The Legislature Wants What You Want</i></p> <ul style="list-style-type: none"> • doctrine of presumed intent • Driedger's <i>Construction of Statutes</i> (2nd edition) - four elements re: intention - expressed intention; implied intention; <u>presumed</u> intention; declared intention • presumed intention - the intention the courts will impute on Parliament in the absence of an indication to the contrary • has no real limit - covers whatever values/policies the court sees fit to attribute to the legislature
<p><i>#5 Inherent Meaning Illusion</i></p> <ul style="list-style-type: none"> • text may be fixed but context cannot be - presuming fixed meaning regardless of the knowledge/ expectations of readers has been discredited in linguistics • context includes the linguistic and social conventions and broader cultural assumptions of the reader • "reciprocity of perspective" - take for granted that readers share the experience (Schultz, p. 3-66) • doesn't preclude effective communication; requires acknowledgement of the complexity and uncertainty that is inevitable 	<p><u>Conclusion</u> - legislative intent is meaningful & plays an important role but it is not the only consideration in statutory interpretation</p> <ul style="list-style-type: none"> • court should follow the legislature when it's possible to draw compelling inferences about intended purpose • court needs to recognize the limitations of FLI • the pretense that judges don't make law undermines judicial credibility • if anything can be imputed to the legislature there is no meaningful distinction between legislative and judicial intent

PMR Tricks	FLI Tricks
<p><i>#6 Abandoning Ship</i></p> <ul style="list-style-type: none"> • abandoning the rule if plain meaning is going to take the court where it doesn't want to go (regardless of the other tricks) • lots of examples in the case law where PMR is applied - or not - by the same judges • Lamer C.J. - <i>R. v. McIntosh & R. v. Michaud</i> • Iacobucci J. - <i>Canada v. Antosko & Rizzo v. Rizzo</i> • Major J. - <i>Canada v. Friesen & Canada v. Schwartz</i> 	
<p><u>Conclusion</u> - PMR is undermined by:</p> <ul style="list-style-type: none"> • arbitrary text selection • elastic definition of co-text • shifting & uncertain conceptions of meaning • highly subjective judgements about plausibility • reliance on a discredited view of language • lack of commitment to the rule itself 	

Statutory & Common Law Principles & Presumptions

Approaches to Defining Words

Ordinary meaning - usual meaning of words by a “reasonable person” of average intelligence & general knowledge/background

- in the context of specialized statutes - the reasonable person is presumed to have specialized knowledge
- presumes words aren't used in any unusual/technical way - except *legal* words (i.e. “assault” in tort law)
- does the statute or a related statute provide a definition?
- *dictionaries* - can be used but definitions may not be determinative
 - weight given to dictionary definitions will vary
 - dictionaries don't take context into consideration; may provide multiple definitions; may vary from source to source
 - *Shaklee Canada Inc v. Canada* - judge uses his own view of personal meaning to define “food”
 - dictionaries are of limited value
 - *Regina v. Riddell et al.* - statute has no definition for “smuggling”; dictionaries leave the issue unresolved
 - *rule of effectivity* - every word in a statute is there for a specific reason and has meaning (i.e. ‘or’ / ‘and’)

Interpretation Acts: Purpose & Provisions

Interpretation Acts - establish certain presumptive rules/statutory conventions

- *BC Interpretation Act*, R.S.B.C. 1996, c. 238 (*BCIA*)
- *Interpretation Act*, R.S. 1985, c. I-21 (*Interpretation Act (Canada)*)
- found in all Canadian jurisdictions

Application - *BCIA*, s. 2; *CIA*, s. 3

- applies to all enactments (including the IA) unless a contrary intention can be found in relation to the particular piece of legislation being interpreted - the “wobble room”
- doesn't trump common law rules of construction unless they are inconsistent with the IA)

Harmony with the Modern Principle - *BCIA*, s. 8; *CIA*, s. 12

- enactments should be construed as remedial (intending a remedy/cure) and given “fair, large and liberal construction and interpretation”
- rejects the common law principle of strict construction (i.e. for penal, taxation statutes)
- stylistic conventions/techniques...

Tense - legislation is read to be “always speaking” and the expressions in the present tense are applied to circumstances as they arise (*BCIA*, s. 7; *CIA*, s. 10)

- enactments evolve and remain in the present tense
- reconciled with the common law principle of Parliamentary intent by presuming that Parliament intended enactments to evolve with the times

Singular/plural - singular may include the plural and vice versa depending on the context (*BCIA*, s. 28(3); *CIA*, s. 33(2))

Definitions - in addition to definitions provided in statutes the *BCIA* and the *CIA* provide rules of interpretation and further definitions for statutes that apply in their respective jurisdictions

- definitions apply to the entire enactment unless a contrary intention appears (*BCIA*, ss. 12-13; *CIA*, ss. 15-16)
- statutory definitions apply to all grammatical forms of a word (*BCIA*, s. 28(4); *CIA*, s. 33(3))
- there are a number of definitions that apply to all enactments unless a contrary intention appears (*BCIA*, s. 29; *CIA*, s. 35)

Gender - gender specific terms include both genders and include corporations (*BCIA*, s. 28(2); *CIA*, s. 33.1)

Referential incorporation - the drafting technique of ‘pulling’ (incorporating) the provisions of one statute (secondary statute - i.e. *Water Act*) into another (primary statute - i.e. B.C. *Environmental Management Act*)

- *BCIA*, s. 44 - “If an enactment provides that another enactment applies, it applies with the necessary changes and so far as it is applicable.”
 - applies when there is general terminology in the “secondary” statute that won’t accord with the “primary” statute or where irrelevant portions are unavoidably incorporated
- when there are changes to the “secondary” statute...

Repealed & Replaced - change is ambulatory and applies to the “primary” statute (*BCIA*, s. 36(1)(f); *CIA*, s. 44(h) - similar)

- repealed (& not replaced) - the ‘old’ definition continues to apply to the “primary” statute (*BCIA*, s. 36(1)(f); *CIA*, s. 44(h) - similar)
- amended - amendment is ambulatory and applies to the “primary” statute (*BCIA*, s. 32; *CIA*, s. 40(2) - similar)
- note - there are numerous cases where the courts have concluded that an amendment is not ambulatory; treated like a repeal - original meaning prevails; justified by arguing that the circumstances indicate a ‘contrary intention’ under *BCIA*, s. 2(1)

Powers - typically set out ancillary powers that may be exercised by public officers designated under a statute

- appointment of public powers (*BCIA*, s. 22; *CIA*, s. 24 - with different powers)

- delegation of powers (*BCIA*, s. 23; *CIA*, s. 24(2) - different terms)
 - exception where a Minister is authorized under a statute to make regulations (*BCIA*, s. 23(5); *CIA*, s. 24(3))

Computation of time periods -

- definitions - 'holiday'; 'month'; 'year'
- calculation - *BCIA*, s. 25; *CIA*, ss. 26-30
 - general rule - first day excluded; last day included (*BCIA*, s. 25(5))
 - exception - both first & last day excluded - triggered by the "magic words" (*BCIA*, s. 25(4))
- holidays - general rule in calculating a time period is that you include holidays (i.e. Sundays); could be argued as inappropriate in some circumstances (i.e. re: mail)
- expiration on a holiday - deadline moves to the next day that isn't a holiday (*BCIA*, s. 25(2)); re: a business office - moves to the next day the office is open (*BCIA*, s. 25(3))

Calculating age - a person reaches a particular age expressed in years at the start of the relevant anniversary of their birth date (*BCIA*, s. 25(8); *CIA*, s. 30)

Components of a Statute

Titles - are part of an enactment (*BCIA*, s. 9)

- give consideration to titles but nothing is determinative; they are part of a contextual analysis
- *R. v. Lane* - given little weight (re: "*An Act for the Suppression of Slot Machines and Other Gambling Devices, ... Slot Machines*")
- *Committee for the Commonwealth of Canada v. Canada* - given more weight - precedent (re: provisions under "*Government Airport Concession Operations Regulations*")

Purpose statements - part of a purpose analysis but does not preclude looking elsewhere in the enactment

- purpose analysis - looking at the purpose of the overall enactment or of the contested provision (will likely include the purpose statement)
- scheme analysis - looking at the rest of the words within the enactment to construe meaning/intent; considers the contested provision in light of other provisions in the enactment
 - if looking to the meaning of a *particular* word within the purpose statement to determine the meaning of a word elsewhere it's a scheme analysis
- multiple and competing statements regarding purpose within an enactment need to be balanced
- when a purpose statement conflicts with a more substantive provision the substantive provision generally prevails (p. 4-20)
- authority granted under an enactment should be in accordance with the purpose statement or the purpose of a provision

Preamble - are part of an enactment (*BCIA*, s. 9; *CIA*, s. 13)

- provides context/guide re: purpose - may be expressive, symbolic
 - *Re Anti-Inflation Act* - preamble indicates the introduction of a far-reaching program of “national concern”
- when a preamble conflicts with a more substantive provision the substantive provision generally prevails
- definitions - may be included for substantive or stylistic reasons
 - may provide some scope or precision to a potentially ambiguous term
 - may give an unusual or artificial meaning to a term
 - may provide for more readable text (less repetition of explanations)
 - may refer to any other legislative definition for guidance; greater weight is given when it deals with the same subject matter
 - may apply in situations of concurrent legislative jurisdiction (i.e. environmental issues)
 - “means” - connotes closed/exhaustive ‘list’
 - “includes” - connotes open/non-exhaustive ‘list’
 - may be intentional ambiguity when regulating a new area of activity

Headings & marginal/head notes - not considered part of an enactment (*BCIA*, s. 11; *CIA*, s. 14)

- for guidance/reference only; may be part of an overall analysis; definitely not definitive
- *R. v. Lohnes* - headings may be used (weak) as an intrinsic aid in interpreting (intent) in ambiguous statutes
- *R. v. Wigglesworth* - also may be used but with even less weight
 - *Charter* case - could be argued that the *CIA* doesn’t apply (superior to statutes)

Punctuation - the meaning of a portion of text will be influenced by the punctuation contained within it

- *R. v. Jaagusta* - ordinary meaning (based on comma placement) would indicate that reasonable grounds are only required for search of a dwelling house
 - goes against the common law tradition requiring reasonable grounds for searching persons
- the presumption is that the legislature knows the common law and will be explicit in overturning it; won’t turn on a comma!
- *R. v. Popoff* - “The rule adopted in the courts is, I think, to pay little, if any, attention to punctuation” (Stuart J. in *Medicine Hat v. Hawson*)

Schedules/appendices - are part of the statute (not subordinate); may ‘house’ forms or other administrative details

- the Act is given more weight - especially if there's a conflict - however they may be employed for interpretation purposes

Bilingual & bijural legislation - greater emphasis on *ordinary meaning*

- bilingual - i.e. all federal acts, etc.

- equal authenticity rule - both versions are equally valid, authoritative; courts must defer to both
- shared meaning rule - contested term is read according to the meaning that is shared between both versions
 - two-part procedure (*Daoust*)...
 - step 1: identify the shared meaning (emphasis on ordinary meaning)
 - generally found in the narrower meaning when neither meaning is ambiguous (*Medovarski v. Canada*)
 - if no shared meaning, go to step 2...
 - step 2: ensure compatibility with legislative intent (contextual approach)
- bijural - codified respect for constitutional requirements
 - *CIA* - ss. 8(1)-8(2)

Contextual Analysis

General History - what was the mischief (remedial purpose) the legislation was intending to address?

- consideration of the factual context at the time of enactment
- taking “judicial notice” of a particular fact that is common knowledge without evidence needing to be given
- prior judicial decisions or evidence
- may include other branches of government - i.e. Law Reform Commissions

Legislative Evolution - looking at previous versions of the particular enactment (*Rizzo, Merk, SFU...*)

- different than legislative history which looks specifically at the actions/statements of the legislature leading up to the commencement of the enactment
 - amendments - modifying existing language or adding new text - may be substantive or declaratory
- *Re Simon Fraser University and District of Burnaby*
 - any change made to legislation is presumed to be substantive
 - but... *BCIA* s. 37(2) tells us that changes from one version to another are not determinative of substantive change
 - may only be declarations/clarifications (“housekeeping” purposes); look for indicators...
 - “meaning is and has always been...”
 - preamble may give clues
 - controversial ‘*tes*’ from the case law: if there was some ambiguity/uncertainty as to the meaning in the initial enactment and the statutory solution was one the courts could have arrived at on their own
 - arguing substantive change - case law
 - arguing clarification/declaration only - *BCIA*, s. 37(2)

Legislative History - the numerous documents generated during the process of enacting legislation

- historically excluded - “floodgate” concerns

- these “parliamentary materials” are admissible but the weight given them varies; descending order:
 - briefing notes (explanatory notes attached to a bill)
 - alternative draft version of the statute
 - house committee reports
 - Hansard
 - press releases
- *Reference re: Firearms Act*
 - “legislative history... [will be considered as long as it’s] relevant and reliable and is not assigned undue weight” (p. 4-46)
 - usually used for determining a law’s purpose and effect/mischief (though not exclusively) - does not speak as loudly as the enactment itself

Horizontal Coherence - reference to other statutes of the same Legislature

- 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”)
 - this is an act of characterization
 - note: may also apply across jurisdictions (i.e. federal/provincial) in compelling cases - e.g. environmental law
- *Columbia River & Property Protection Society and East Kootenay Environmental Society v. British Columbia (Ministry of Environment, Lands and Parks)*
 - BC Environmental Appeal Board (administrative tribunal) re: standing in regards to an approval (vs. standing permitted in regards to licensing)
 - “classic argument” re: “silence” in a statute - if the Legislature had intended it they would have provided express language to that effect (p. 4-50)
 - apply the modern approach --> different wording = different intent
 - legislative evolution - recently amended but no inclusion of express language (re: “any person”) as seen in other environmental statutes
- *R. v. Ulybel Enterprises; Bell ExpressVu Limited Partnership v. Rex* - “the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter” (p. 4-52)
- conflict between enactments - (general rule) courts are obligated to make all possible efforts to avoid finding an inconsistency; when impossible (and no provision states which enactment prevails) then apply the following presumptions:
 - later enactment prevails over an earlier one (more recent expression of legislative intent)
 - specific enactment prevails over a general enactment
 - an earlier, specific enactment prevails over a later, general one - specificity is more important than timing
- *Levis (City) v. Fraternalite de Policiers*
 - re: job loss due to criminal conduct
 - police act - exception; municipal act - no exception
 - conflict is triggered by the hybrid nature of the criminal offence resulting in different outcomes under each statute
 - application of presumptions - police act is newer/more “specific” (p. 4-56)

- legislative history (Hansard) re: specific intention behind more beneficial exception in police act; consequentialist reasoning also applied
- result: police act prevails

Vertical Coherence - interpretation in accordance with higher level statutes

- legal requirement that the provisions of an enactment must conform to “higher level” enactments
- conflict - higher level enactment prevails; provisions at issue in the lower level enactment are non-operative
- applications:
 - all legislation must be consistent with the *Constitution/Charter*
 - subordinate legislation must be consistent with its enabling statute
 - a statute may authorize a subordinate lawmaker to enact rules that are contrary to the enabling (or other) statute
 - “clear evidence of a contrary intent” - Sullivan (p. 4-58)
 - paramountcy of federal (even subordinate) over provincial legislation (both valid)
 - ‘paramountcy’ of human rights legislation (even when the other enactment is more specific); codified in B.C. *Human Rights Act*
- approaches/coherence with Charter values:
 - “straight-forward” - court first interprets the provisions of the statute with no regards for the “higher level” enactments (i.e. *Charter*); determines appropriate interpretation and then determines if the provisions are of no force due to vertical coherence requirements
 - results in greater respect for institutional roles - provides an opportunity for the judicial branch to “talk to” the government
 - “integrated” - court refers to provisions of “higher level” enactments in the process of interpretation favoring an interpretation that provides consistency with the “higher level” enactments
 - always presumes coherence with the *Charter* - avoids calling out the government
 - *Committee for the Commonwealth of Canada v. Canada*
 - *R. v. Sharpe*
 - *Bell ExpressVu* - with a nod to the straight-forward approach (p. 4-61)

International Instruments - international treaties and conventions are not part of Canadian law unless they have been implemented by statute (*Baker v. Canada* - p. 4-64)

- therefore even ratified conventions have no direct application within Canadian law
- though values reflected in international human rights law may inform a contextual approach - part of the legal context for enactment and judicial review
- legislature is presumed to respect the values/principles enshrined in international law - interpretations that reflect these are preferred
- *Baker* dissent (Iacobucci) - proceed with caution with such an approach; inadvertently grants the Executive the power to bind citizens without involving the legislative branch (p. 4-65)

Previous Statutory Interpretations

Judicial Decisions - application of principle of *stare decisis* (following precedent); weight accorded to previous decisions will vary according to factors such as date, jurisdiction, court level, etc.

Administrative Interpretations - decisions of administrative tribunals; interpretations by civil servants & Ministers

- courts will often accord deference to decisions of a tribunal if the matter falls within the tribunal's area of specialized knowledge/experience
- administrative interpretation (i.e. policies that guide the decisions of managers) is not binding but may be treated similarly to the decisions of tribunals
 - developed by people with extensive knowledge/experience
 - consequences of departing from these established interpretations may be significant (i.e. invalidation of thousands of previous decisions)
 - a court will likely uphold a long-standing administrative decision that can be reasonably supported

Textbooks - legal literature is now clearly admissible; not binding but may carry substantial weight if the source is widely recognized as an expert (i.e. Hogg & Con Law)

Common Law Principles of Interpretation & Presumptions

Principle of Associated Meaning - a word takes its meaning from the surrounding words

- *McDiarmid Lumber v. God's Lake First Nation*
- words linked by "and"/"or" serve an analogous grammatical and logical function within a provision - should be interpreted with a view to their common features
 - typically but not exclusively applied
- "the meaning if a term is revealed by its association with other terms: it is known by its associates" (p. 4-70)
- principle may result in the scope of the broader term being limited to that of the narrower term/a broad provision being read more narrowly
- *Mitchell* - terms "treaty" and "agreement" take colour from one another (p. 4-72)
 - reading in of "ancillary" has a narrowing effect - limits "agreement" to "ancillary agreement" (p. 4-74)

Presumption Against Tautology ("The Rule of Effectivity") - all the words in an enactment are put there for a specific purpose; shouldn't adopt an interpretation that has the effect of rendering any of the words "redundant" or "mere surplussage"

- "shopping list" drafting - rule presumes each word is a unique reference
 - counter-argument is that the words are used out of an abundance of caution and any overlap is to be ignored
- *McDiarmid Lumber v. God's Lake First Nation*
- "every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose" (p. 4-74)

- often invoked to resolve ambiguity or determine the scope of general rules
- if “agreement” is interpreted broadly then “treaty” has no role to play
 - result: “agreement” should be read narrowly as supplementing “treaty” (a special kind of agreement)

The Eiusdem Generis Principle - a general phrase (“basket clause”) will take its meaning from the specific words that precede it

- the inevitable result is that the meaning of the general phrase will be narrowed
- ex: “any railway station, bus depot, ferry station or other public place” --> narrowed to public places that have something to do with transportation
 - scope is substantially narrowed
 - must be a common denominator among the proceeding words otherwise the general term is given it’s ordinary - and broader - meaning
- principle is countered by the rule of effectivity - narrowing the meaning undercuts the apparent intent of the legislature
- *Nanaimo (City) v. Rascal Trucking Ltd.*
 - application of principle (“limited class rule”) to “or other matter or thing” to create two distinct classes of potential nuisance
 - broader interpretation would “run contrary to the intent of listing specific items before it” (p. 4-76)
 - result: pile of soil deemed to fall under category or constructed/erected things

The Expressio Unius Principle - suggests that the express mention of one thing excludes all others by necessary implication

- ex: person resides with spouse, children, father-in-law & grandparent
 - dinner invite for “family” might be ambiguous
 - dinner invite for “family, including your father-in-law” could be inferred to exclude the grandparent
- principle could counter the results suggests by the *a pari* and *a fortiori* principles (re: coherence)
- potential scope of application is immense
- *C.R. et al v. Children’s Aid Society of Hamilton*
 - is legislative silence (re: “responsibilities” - vs. “rights and responsibilities” - of the children’s lawyer) deliberate or inadvertent?
 - silence is not always indicative of intent to exclude those matters not mentioned; may be an alternative explanation (p. 4-80)
 - result: the word “responsibilities” was necessarily implied by the word “rights” - common law principle re: rights/responsibilities
 - not expressly excluded so may be deemed to be included

Uniformity of Expression - words used by Parliament are deemed to have the same meaning throughout the same statute - unless there is a contrary intention (*Schwartz v. Canada*)

- different words in a statute are deemed to have different meanings

Presumption Relating to Territorial Application - a legislature is presumed to enact a statute only in relation to persons, property, things or events that fall within the territorial boundaries of its legislative jurisdiction; two assumptions:

- the statute does in fact apply to the entire territorial jurisdiction (as opposed to specific regions)
- that extra-territorial effect is not intended
- raises constitutional considerations re: division of powers (i.e. federal Parliament can enact extra-territorial legislation)
- can be overcome by clear language to the contrary
- *R. v. Hammerbeck* (taking of child to the US contrary to custody order)
 - applies test from *Libman v. The Queen* - significant portion of the activities constituting the offense took place in Canada (p. 4-83)
 - “real and substantial link” between the offense and this country

Presumptions in Relation to Particular Areas of Law -

Individual Rights -

- presumption the legislature does not intend to adversely affect individual rights
- presumption that where there are two reasonable interpretations the court should select the one which does the least harm to individual rights
- presumption that legislation that affects individual rights should be given a strict construction
 - encompasses manifestation that have an adverse effect on:
 - personal liberty, security or well-being (*Charter*)
 - freedom of commerce (property)
 - access to the courts (democracy)
 - rights of natural justice (procedural fairness - re: interactions with government)
- *Bell ExpressVu Limited Partnership v. Rex*
 - strict construction of penal statutes and “*Charter values*” presumption only receives application where there is ambiguity as to the meaning of a provision (p. 4-84)
 - ambiguity must be “real” - two or more plausible readings equal in accordance with the intentions of the statute - before going to external aids/ other principles of interpretation
 - invokes the straight-forward approach to vertical coherence
 - courts are responsible for applying/developing the rules of the common law in accordance with *Charter values*
 - does not have the same role vis-a-vis statute law (institutional roles)
 - quote from *Symes v. Canada* re: rationale for restricting the *Charter values* rule (p. 4-86)
 - must be able to apply - not only consult - the *Charter*
 - precluding infringements would make it impossible for the government to justify infringements as reasonable limits under s. 1
 - benefits: brings vitality to the democratic process; fosters dynamic interaction and accountability amongst the branches

Property Rights -

- one of the earliest common law presumptions was that legislation that interferes with property rights should be strictly construed in favour of the property owner (historical, liberal approach); no constitutional protection for property rights
- two primary situations:
 - land use planning - courts now take a more balanced approach recognizing the rights of all owners and the public generally
 - expropriation - presumption that no statute is to be interpreted so as to permit expropriation of property without providing fair compensation (still holds great weight)

Criminal Law -

- rule of strict construction only applicable when attempts at neutral interpretation (as suggested by Interpretation Acts - re: remedial construction) still leave reasonable doubt as to the meaning/scope of the text of the statute (*R. v. Hasselwander*, p. 4-90)

Human Rights Statutes - have quasi-constitutional status and should be interpreted in a broad purposive manner that achieves the remedial objects of the legislation

- *School District No. 44 (North Vancouver) v. Jubran*
 - perception/intent of the harassers vs. the effects of the harassment on the individual (re: homophobic bullying of a heterosexual peer)
 - “Act must be interpreted so as to advance the broad policy considerations underlying it... a manner befitting the special nature of the legislation... best ensure the attainment of the objects” (p. 4-96)
 - however... words of the statute can’t be ignored (using a contextual approach)
 - discussion of the “subjective component” re: discrimination (p. 4-98)

Taxation Statutes - varying approaches to taxation statutes...

- early cases - narrow literal interpretation; strict construction in favour of the taxpayer
- subsequently - SSC has used a broad and purposive approach (in line with its general interpretive approach)
- recently - more cautious approach; court will refrain from judicial innovation except in the case of explicit authority by Parliament (due to the complexity of the policies/principle)
- *Ludco Enterprises Ltd. v. Canada*
 - “courts must be cautious before finding within the clear provision of the Act an unexpressed legislative intention... risk upsetting the balance Parliament has attempted to strike in the Act” (p. 4-102)
- *Imperial Oil Ltd. v. Canada*
 - complex structures; need for taxpayers to safely rely on the words of the *Income Tax Act* when conducting business/managing their affairs (p. 4-103)

Municipal Law - shift towards broad interpretation; legislation tends to confer broad powers

Temporal Issues in the Operation & Application of Statutes

Coming Into Force

Enactment - refers to the completion of the legislative process - i.e. when a statute received Royal Assent

- statute may be referred to for interpretation purposes once it's enacted (even if it hasn't commenced yet)

Commencement - refers to the date the statute has the force of law

- date of Royal Assent (if the statute is silent) - increasingly rare
 - *BCIA*, s. 3(2)
 - *CIA*, s. 5(2)
- specified date in the statute (past or future)
 - *BCIA*, s. 5 - provisions designed to immunize preparatory actions (laying the groundwork for a statute's operation) from subsequent challenge on the ground that, because the Act has not yet come into force, there was no authority to undertake them (*CIA*, s. 7)
- upon the happening of a specific event
- by proclamation by Cabinet (Governor in Council/L.G. in Council)
 - increasingly popular

Timing of Commencement/Repeal - provisions re: specific time of the day legislation takes effect or ceases to have effect on the date of repeal

- *BCIA*, s. 4(1) - enactment commences at the beginning of the day it CIF - 12:01 am
- *BCIA*, s. 4(3) - statute will cease to have effect at the end of the day it is repealed - 11:59 pm
- *BCIA*, s. 4(2) - exception provided for "repeal & replace" - statute repealed ceases to have effect at the time the new enactment commences

Subsequent Changes to Legislation/Transitional Rules

Expiration - *BCIA*, s. 4(4) statute has lapsed/no longer has any practical significance (judgment call); not the same as an expressed termination date

Amendment - changes in the form of modifying existing language or adding new text

- housekeeping - tidying up
- declaratory - making clearer the intent that was already there; no intent to make any substantive change to the law
- remedial - substantive change to the law
 - look for express statements re: type of amendment - i.e. preamble may state it's declaratory
 - controversial "test" for identifying "implicitly" declaratory statutes - two preconditions must be satisfied:

- there was some ambiguity or uncertainty as to the meaning of the initial enactment; and
- the statutory solution was one the courts could have arrived at on their own
- otherwise it could be argued the amendment is substantive

Repeal - by another piece of legislation - *BCIA*, s. 35...

- No revival - *BCIA*, s. 35(1)(a) - reversal of the common law "doctrine of revival" - that upon repeal the common law rule in effect immediately prior to the enactment was thereby revived
- Lawful acts not affected - *BCIA*, s. 35(1)(b) - can't challenge acts that were lawful while the repealed law was in force
- Protection for accrued/accruing rights - *BCIA*, s. 35(1)(c) - repeal does not affect rights & obligations; goes to issues of fairness, reliance, certainty (see later)
- Offenses - *BCIA*, s. 35(1)(d) - reversal of common law position re: offences - that an offense committed prior to the repeal could not be prosecuted afterwards
 - in most cases the Crown decides not to proceed with charges as it would result in punishment for conduct that is no longer prohibited
- Proceedings - *BCIA*, s. 35(1)(e) and s. 35(2) - any investigation, proceeding or remedy in relation to a "vested right" or an "offense" under a statute may be initiated, continued or enforced after its repeal (see later)

Repeal and Replacement - enactment is modified by repealing and replicate with new provisions

- Personnel - *BCIA*, s. 36(1)(a) - personnel appointed under the former enactment continue to serve
- Continuation of proceedings - *BCIA*, s. 36(1)(b) - proceedings initiated under the former enactment are continued in conformity with the new enactment; new procedures are applied to continued proceedings
- Procedures - *BCIA*, s. 36(1)(c) - new procedures are followed - to the extent they can be adapted - in the recovery/enforcement of fines/penalties that were incurred, enforcement of rights existing/accrued, or in proceedings related to matters that happened before the repeal
- Mitigated Penalty - *BCIA*, s. 36(1)(d) - if the new Act reduces a penalty/punishment then the new provisions apply to any penalty/punishment imposed/adjusted after the R&R
 - *Charter*, s. 11 - if the punishment for an offense has varied between the commission of the offense and sentencing, the accused has the right to the benefit of the less punishment
- Regulations - *BCIA*, s. 36(1)(e) - any regulation made under the repealed statute will continue in force under the new Act so long as it's consistent with the new statute; regulations are presumed to be made under the new enactment until specifically repealed or replaced
- Referential Incorporation - *BCIA*, s. 36(1)(f) - any reference in a statute to the former (repealed) enactment is deemed to be a reference to the new enactment
 - if there is no provision in the new enactment that relates to the same subject matter then the former enactment is deemed to be "unrepealed"

Temporal Operation & Application of Legislation

Presumed application of legislation (Sullivan - p. 5-7); applications excluded as unacceptable (rebuttable by contrary legislative intent):

- retroactive or retrospective application
- applications that interfere with vested rights
- extraterritorial applications
- applications to the Crown or to foreign states

Temporal operation - when did the law come into force/when will it be over

Temporal application - refers to the range of facts to which legislation may be applied; may not correspond with temporal operation - i.e. person *previously* convicted of a sex offence is *now* required to register under a new law

- three classifications (p. 5-11):
 - retroactively - changes the past effects of a past event; a statute that operates as of a time prior to its enactment
 - retrospectively - changes the future effects of a past event; operates for the future only but imposes new results to past events; operates forwards but looks back by attaching new consequences for the future to an event that took place before the statute was enacted; “future consequences for past actions”
 - immediately - legislation that attaches future legal effects (prospective) to an ongoing situation (a status/condition/incomplete series of events)

Common law presumptions against retroactivity/retrospective application and in favour of immediate effect and no interference with vested rights

- presumption against retroactivity - strong weight
 - presumption in favour of immediate effect is the inverse - also strong
- presumption against retrospectively - qualified; not as strong
 - application exceptions (p. 5-19) - legislation that is:
 - benefits conferring (with no corresponding prejudice to others)
 - designed to protect the public (i.e. preventing a person previously convicted of fraud from being an accountant)
 - procedural in nature (doesn't affect substantive rights)
- against interference with vested rights - qualified; weak
 - can be rebutted based on circumstances
 - there is a difference between “accrued” (crystalized) and “accruing” (inevitable)

Focus on the underlying values - presumptions are rooted in common law values; built upon public policy arguments/consequentialist reasoning

- retroactivity - fairness; rule of law; protection of private property
 - certainty; predictability; reliance; stability; security; rationality; formal equality
 - arbitrary; impossible to comply; can't plan accordingly
 - unfair to change a law people have relied on - protects interests & expectations
- retrospectively - "looking back" not “acting back”
 - difficult to trust laws that change retrospectively; can't change behaviour in time

Temporal application depends on the triggering event & characterization

- methodology - contextual approach (p. 5-13/14)
 - establish the coming into force date
 - identify the facts & conditions of the “situation” - what facts must be established to “trigger the legal effect?”
 - what actually happened - situate the facts in time
 - determine whether the relevant facts were complete, ongoing, or hadn’t commenced yet when the provision came into force
 - determine whether applying the provision to the facts would interfere with vested rights
 - is there an interest/expectation the law considers to be a right?
 - has that right vested or accrued?
 - would applying the provision diminish/destroy the right?
 - interference can happen with retroactive, retrospective & immediate application of a provision
 - identify the presumption and determine whether it's been rebutted
 - determined through contextual analysis/legislative intent (usual techniques with special emphasis on the values underlying the presumptions)
 - all the presumptions can be rebutted - expressed intention/IMPLIED intention
 - few constitutional constraints to enact retroactive/retrospective legislation
 - may enact transitional provisions to express intention

Gustavson Drilling (1964) Ltd. v. M.N.R.

- the (tax) law isn't changing the law in the past - forward looking basis
- appellant waited too long to make claim for some years
- not a retroactive application - the law changes

MacKenzie v. BC (Commissioner of Teachers' Pensions)

- 1978 - retired and elected a pension scheme
 - maximized benefits while alive
- 1988 - legislative change
 - deeming spouses to choose a pension that leaves something for the surviving spouse
- 1989 - Mr. M. dies - no more pension for Mrs. M.
 - unclear whether the new legislation applies retroactively to the past choice
- re: s. 38 (p. 5-28) - court does not characterize this as an expressed rebuttal of the presumption against retroactivity
 - legislative history - previous s. 39 (p. 5-30) was transitional - tidying up; not meant to apply to the whole Act
 - consequentialist analysis - para. 9; para. 22-24
 - Mrs. M. is trying to get the benefit of both the pension already chosen and the new scheme
 - scheme can't afford such a "win-win" application for everyone
 - shows the importance of policy in classification

Accruing & Vested Rights - presumption only applies where legislation is somewhat ambiguous and reasonably susceptible to two constructions

- birthplace of presumption is contracts/property interests - not as strong now
- refers to concrete rights of particular persons (rather than abstract rights)
- in considering a rebuttal the courts balance several factors:
 - degree of fairness (most common form of unfairness is detrimental reliance)
 - importance of the policies implemented by the new legislation
 - the impact of delaying/limiting the application of the new legislation
 - textual/other evidence of legislature's intent
- express words re: rebuttal are not necessary - i.e. may depend on the cumulative impact of several factors that rebut the presumption (*National Trust Co. v. Larsen*, p. 5-23/24)

Gustavson Drilling - "no one has a vested right to continuance of the law as it stood in the past" (p. 5-32)

- the mere existence of a right at the time of repeal is not a right accrued
- harkening to ordinary meaning - pre-contextual approach

Scott v. College of Physicians and Surgeons of Saskatchewan

- doctor didn't respond to the College; didn't pay his fees; was struck from the membership register
- former statute - s. 40(2) re: reinstatement (the right in question)
- Sept 25 - change in the law - s. 40(2) was repealed - replaced with more cumbersome requirements to be reinstated
- Sept 29 - inquires already made to College re: monies owing/reinstatement; deposits money with his lawyer; squabbling between lawyers re: amount owing
- Oct 10 - application submitted
- question: was Scott's right re: reinstatement "accrued" or "accruing" before the legislative change?
 - p. 5-34/35 - discussion of definition of "accruing"
 - entitlement is not sufficient
 - entitlement combined with intention is not sufficient
 - requires entitlement, intention & inevitability
 - Scott is successful in determining an accruing right (requested the amount of money; Council had determined penalty; taken the step of depositing money with his lawyer)
 - accrued - a right that has already crystallized
- accrued/accruing = "vested rights"
- arising from the common law - presumption against interference
- arising from a statute (codified) - *BCIA*, s. 35(c) & 36(c)

Subordinate Legislation

History & Types of Subordinate Legislation

Subordinate Legislation - law which is enacted by bodies that have been delegated by legislative powers by Parliament/Legislature

- "made under" primary legislation (also referred to as delegated or secondary legislation or even "regulations" - broadest sense vs. narrow use below)
 - authorized by the primary legislation - i.e. "enabling clause"
- signifies it "must" be consistent with the authorizing statute - leads to issues re: scope of delegated law-making power
- has the force of law - capable of creating the same rights/responsibilities as statute law
 - binding on the public; enforceable in the courts
- historically used in emergency situations
 - history in English Parliamentary government (Dussalt & Borgeat, p. 6-2)
- on the rise; out-pacing the development of primary legislation
 - complexity/variety of regulatory responsibilities undertaken by governments (especially post-WWII - i.e. *War Measures Act*)
 - 1950 - *Regulations Act* (R&R...)
 - 1972 - *Statutory Instruments Act*
- goes to institutional roles - Legislative Branch is responsible for the primary legislation; Executive Branch (Cabinet) is given authority for the subordinate legislation
 - higher legislative bodies have the power to confer responsibility upon administrative authorities
 - Constitution gives these bodies "supreme authority" (p. 6-3)
 - usually authored by the Ministry with the authority to administer the legislation
 - others include municipalities; various agencies/boards
- types include: regulations (see below); orders (narrower in scope than regulations); decrees (Quebec); rules (i.e. rules of procedure in courts/tribunals); tariffs (re: regulating economic activity); by-laws (governing corporations including municipalities); letters patent (used by an authority to create a corporation & authorize particular activities)
 - subject to procedural requirements - i.e. *BC Regulations Act*

Regulations - main type of subordinate legislation but not the only kind; by-laws also popular at the municipal level

- defined in the *BCIA* - open ended language (creates confusion - see next section)
- when there's a dispute about a regulation you may need to go to the enabling clause in primary statute - apply SI principles to both the primary statute (re: validity) and the regulation to determine meaning

Legislative/Administrative Distinction - legislation needs to be worked out on the ground by human beings - what is guiding their work/decisions?

- “instruments of a administrative nature/directives” - do not have the binding force of law; enormously important role in the application of the law in individual cases
- Board/Agency has been established through primary legislation
 - create the details through regulations, etc.- legislative
 - create further directives: guidelines, manuals, bulletins, etc. - administrative
- purpose of directives: “a rule of conduct of an internal nature made by an administrative authority pursuant to a general power of control in order to structure the action of one’s subordinates, and the which the failure to obey is subject to an administrative and non-judicial sanction” (Dussault & Borgeat, p. 6-7)
 - instructions for practice from an employer to an employee
 - norms of conduct - expressed in writing; widely distributed
- “*a rule of conduct of an internal nature*” - not directed at the public at large but at civil servants to have to apply the law/make decisions; akin to guides
- “*pursuant to a general power of control*” - power to make directives is typically not expressly provided for in legislation but is based on implicit authority; arises from general terms the statute uses to confer authority upon the department/agency
- “*to structure the actions of subordinates*” - three reasons to structure the activities of subordinates:
 - to ensure uniformity in activities common to all employees (i.e. travel expenses)
 - to ensure uniformity, consistency and thereby predictability of interpretations and applications of law and regulations by civil servants
 - promotes consistency in application of the law and advances the rule of law
 - to ensure the transparency of decision-making practice and policy
 - communicative function - explain how/why decisions are made; informs the public about how decisions that may affect them are likely to be made
 - enhances ability of the citizen to predict/plan
- “*subject to an administrative and non-judicial sanction*” - not law therefore not judicially enforceable/reviewable; courts do not interfere with/judge the drafting/application of directives
 - matter for concern given how seriously they affect the way citizens are dealt with by the state - what’s the scope of power on people’s everyday lives?
 - big debate re: legislative roles --> administrative documents governing people without legislative authority
 - things of a legislative nature are held accountable therefore challenges to directives need to be directed at the legislative instruments
 - gives rise to litigation re: classification of things as legislative or administrative
 - rebuttal is that you need these details for things to function
 - there is also still an onus on administrative decision makers to make decisions based on individual cases (p. 6-11 re: “rule against fettering”)
- advantages: more effective administration - things are more efficient, predictable, etc.; more informed decision making, planning, etc.; better framework for discretion than establishing precedent
- disadvantages: lack of accountability

Authority to Make & Apply Directives - “Administrative Law”, David Mullan (article)

- accepted that statutory authorities charged with the exercise of discretionary power have authority to issue policy statements, provide guidelines re: discretion, etc. - even when not specifically authorized by statute
 - primary legislation often authorizes subordinate legislation that conflicts/ overrides the primary legislation
 - if it's okay to have laws made through the relatively expedited process of secondary legislation then why do we need the more cumbersome process that primary legislation goes through?
- the issuance of informal policies/guidelines is permissible and often extremely helpful (see advantages above)
 - they may achieve the status of “de facto law” (longevity, built up expectations) but the courts have never conceded them official status (p. 6-10)
 - practical effect - can be altered as informally as they are created; reliance cannot create entitlements to their application based on estoppel or legitimate expectation
 - policies of not give rise to legally enforceable rights
- rule against fettering prevents the agency from applying policies automatically to particular situations - particular applications must be considered in good faith under the circumstances (p. 6-11)

Regulations Versus Directives - *Re Friends of the Oldman River Society and The Queen in right of Alberta*

- Alberta wants to build a dam on the Oldman river; go through consultations - First Nations, environmental groups, etc.; get a permit & proceed
- Friends object based on the premise that neither of the Federal ministers subjected the project to the "Guidelines Orders"
 - section 6 - if it contemplates an administrative directive the government can't be held to do anything about it
 - if it's legislative then non-compliance can be subjected to "prerogative relief"
- re: section 6 - has features of subordinate legislation (p. 6-14/15)
- just because an administrative word appears - i.e. "guidelines" - don't assume it's administrative; must look at the entire context (i.e. “framework” legislation)

Authority to Enact Subordinate Legislation

Enabling Clauses - a statutory provision which authorizes a delegatee to enact legislation

- no statutorily delegated law-making authority = instrument will be considered ultra vires and of no legal effect
- many versions (see “contemporary example” p. 6-16 - redundancy?)
- *BCIA*, s. 41 - global enabling clause; expands scope both generally & specifically

Interpretation Act Provisions - Interpretation Acts apply to both primary and subordinate legislation (unless there's a contrary intention)

- certain provisions relate to subordinate legislation (p. 6-17)

Regulation-Making Process & Procedures

Overview of Federal Regulation-Making Process -

- “regulations” (delegated/subordinate legislation - see definition p. 6-21) are made by persons/bodies to whom Parliament has designated authority to make them
 - authority must be “expressly delegated” by an Act
 - enabling Act generally set out the framework of a regulatory scheme and delegates authority re: the details
 - provides a source of legal constraint (along with legal examination, registration & publication) - establishes scope of authority granted; regulations must not conflict with/restrict/extend the scope of its application (see previous section re: practical applications)
- making of regulations is governed by *Statutory Instruments Act* (and *Statutory Instruments Regulations*) & *Regulatory Policy*
- *Statutory Instruments Act* establishes process to ensure regulations are legally sound and accessible through the *Canada Gazette*
 - defines certain types of documents considered regulations
 - *SIR* or enabling Act can exempt some regulations from the regulatory process
- *Regulatory Policy* established requirements for the “Regulatory Impact Analysis” - the primary policy framework for making regulations; ensures regulatory activity serves the public interest (“greatest net benefit”)
 - ensures money is spent wisely - weighs benefits of alternatives to regulations/alternate regulations
 - federal commitment to working in partnership with “stakeholders”/interested individuals
- summary of the process - combination of legal/policy requirements:
 - development of a regulatory proposal by the department responsible for the enabling Act (or another agency/body that has regulation-making authority)
 - assistance from legal advisors/Regulations Section, Department of Justice
 - development of Regulatory Impact Analysis Statement (RIAS) - public document; similar to a Memorandum to Parliament
 - central agency review (Privy Council Office, Treasury Board Secretariat, Department of Justice)
 - Special Committee of Council (committee of Cabinet) is responsible for the *Regulatory Policy*; committee is supported by the Regulatory Affairs Division of the Regulatory Affairs and Orders in Council Secretariat of the Privy Council Office
 - pre-publication
 - Part I of the *Canada Gazette* (within 7 days) - gives interested parties time to express their views (some exemptions)
 - making or approval
 - official establishment by the regulation-making authority - i.e. “order in council”, “ministerial order”, resolution, etc.
 - registration
 - Clerk of the Privy Council (some exemptions)
 - coming into force

- upon registration unless the enabling state or the regulations specify another commencement date
- retroactive operation requires clear statutory authority
- publication
 - Part II of the *Canada Gazette* (within 23 days) - published by the Queen's Printer (some exemptions)
 - failure to publish does not mean the regulations are invalid but it prevents conviction for an offense of contravening the regulation (i.e. G20)
 - rule of law - law must be knowable
 - exception: if the regulation is exempt from publication or applies prior to publication - reasonable steps re: notice to individuals affected must be taken
- distribution
 - all Orders in Council are made available three days after approval by the GG
- parliamentary scrutiny
 - monitoring by the Standing Joint Committee for the Scrutiny of Regulations - reviews regulations after they are made
 - brings problems to the attention of the regulation-making authority
 - can make reports to both Houses of Parliament; can propose disallowance of an instrument

Procedural Requirements in BC - Regulations Act

- provincial version of the federal *Statutory Instruments Act*
- sets out procedural requirements - mainly re: registration & publication
 - greater formalities for subordinate legislation - provides for public notice, accountability, transparency of the process of administering government
 - goes to principles re: rule of law; democracy
- only applies to subordinate legislation that falls within the Act's definition of "regulation" - considerably narrower definition than the *BCIA* (p. 6-28)
- general outline:
 - examination by person designated by the Minister (i.e. Legislative Counsel office) - checking for lawful authority/drafting errors
 - deposit with the Registrar of Regulations - central registry providing public access; checks for procedural compliance
 - regulations come into effect once deposited (exception for regulations creating offenses)
 - publication in the *Gazette* - publication of all regulations or notice for those that are exempt from publication
 - re: regulations that create offenses - prohibited/prescribed conduct only becomes an offense after the date of publication
 - no conviction of an offense not published unless reasonable steps are taken to give notice (i.e. G20)

Concerns About Control & Accountability -

- subordinate legislation has long surpassed primary legislation as the quantitatively greater version of enacted law (Mullan, p. 6-31)
- unstructured grants of discretion creates questions re: the role of Parliament/ legislatures as the most significant players in the development/refinement of positive laws (parliamentary sovereignty; democracy)
- appearance of (discredited) “King Henry the VIII clauses” - a provision that authorizes subordinate legislation that conflicts with or overrides the terms of primary legislation
 - justifications: “legislative intent”; complex democracy/limitations of Parliament (time/need to work quickly in the public interest, etc.); legislators should devote time to principles; primary legislation should be accessible, practical, manageable, etc.; subordinate legislations allows details to be worked out/ changed
 - most significant reason: diminution of the power of Parliament in an era of strong executive government
 - conferral of broad discretions is desired by executives with effective voting control over the executive branch - they can take matters out of the hands of the legislative branch and arrogate it to themselves/agencies under their control/influence
 - result: enactment of legislation with little opportunity for parliamentary debate - principles/details left to the executive to work out/change at whim
 - historically justified only in times of war/emergencies
 - antidotes to the erosion of parliamentary power/proliferation of unchecked subordinate legislation?
 - legislative scrutiny/review - prior to coming into force (i.e. through approval requirement) or subsequently by committees
 - legislative scrutiny - checks include:
 - *SIA* provision (weak) re: examination by the Clerk of the Privy Council in consultation with the Deputy Minister of Justice (re: validity, form, content)
 - *Canadian Bill of Rights* - Minister of Justice must check all federal statutes to ensure conformity
 - *Charter* - similar obligation by the Minister of Justice
 - *SIA* and *Sask. RA* - permanent referral of SL to a review committee
 - confined to scrutinizing form not considering wisdom/merits re: policy
 - checks depend upon commitment from executive to make them work - resources, set up along partisan lines, etc.
 - no reason to believe there are any subordinate legislation committees in the country with enough profile to draw attention to excesses/misuses re: regulations and other instruments
 - public consultation - great tendency to move towards this model as a surrogate for legislative scrutiny/debate
 - expansion of “notice and comment procedures” (p. 6-33)
 - questions re: effectiveness, accessibility, possibility for regulatory paralysis
 - broadly democratic - not subject to the same level of government manipulation/ appropriation

Judicial Oversight of Subordinate Legislation

Limitations Arising from the Enabling Statute - not authorized = ultra vires/invalid

- grounds for challenging subordinate legislation:
 - explicit limitations in the wording of the enabling clause (may be general or specific)
 - if enabling clause is broad/general then validity will turn on statutory interpretation - contextual approach looking at both the challenged subordinate legislation and the relevant provisions of the parent statute
 - interpret the parent statute first; if valid then move on to other interpretive issues

De Guzman... and The Minister of Citizenship and Immigration

- arguing against immigration regulations on three grounds:
 - no lawful authorization
 - *Charter* violation (re: reunification of parents/children)
 - inconsistency with international principles
- *Immigration and Refugee Protection Act* - "framework legislation" (backbone statute only - core principles & policies of statutory scheme - relatively concise)
 - framework legislation contemplates broad delegations of legislative power
 - enabling clause confers wide regulation-making powers
 - generally courts are deferential to regulations especially when there are broad grants of delegated power under which they are made
- courts give respect to legislative intent to delegate the responsibility for the bulk of the law-making to the Executive branch - need for flexibility, expertise, etc.
 - courts are more deferential to regulations due to institutional roles - cautious in reviewing regulations

Federated Anti-Poverty Groups of BC v. BC

- re: 90 day residential qualification for income assistance (G.A.I.N.)
- arguments:
 - void on administrative grounds - ultra vires the *Act*
 - three *Charter* arguments
- four grounds re: administrative law argument (p. 6-38):
 - no authority
 - even if there is authority, it contradicts the parent clause
 - discrimination
 - contradicts *Humans Rights Act*
- interpretation of the enabling clause:
 - first glance - looks like there is sufficient authority
 - broad wording gets read down
 - underlying philosophy does not equal purposes - look to additional purposes (not conclusive), scheme
- result: no express authority (democratic principles - p. 6-40)

Constitutional Grounds - three potential types of constitutional challenges to a piece of subordinate legislation:

- division of powers - legislation cannot be beyond the constitutional authority of the delegator
- *Charter* & Aboriginal Rights - legislation must conform with these requirements (*Charter* violations may be saved by section 1)
- implied constitutional limitation - legislation should not infringe upon parliamentary supremacy
 - Henry the VIII clauses viewed as an abdication of parliamentary accountability (see above)
 - *Re: Gray* (re: *WMA* repealing 'agriculture exemption' from conscription in the *Military Services Act*) - court concluded there was no abdication since Parliament could repeal the *WMA*
 - what about in times of peace?
 - *Waddell v. Governor in Council* (re: an order in council amending the Schedule to the *Northern Pipeline Act* dispensing with the need for "reconstruction financing approval") - court concluded Parliament authorized the delegation
 - includes discussions of Henry the VIII clauses & criticisms by the "Donoughmore Committee" Report (UK)
 - but the question wasn't whether Parliament can delegate - it clearly can - it was whether it did - and it did

Summary of Concepts & Process

Key Principles of a Contextual Analysis

Sources:

- Driedger's Modern Principle
 - goal: to determine legislative intent in by considering the broader (historical, social) context and the specific context of the statute (scheme, etc.)
 - Common Law Principles
- Interpretation Acts
- Regulation Acts

Principles:

- **Ordinary & Grammatical Meaning** - plain meaning
 - technical meaning (audience)
 - plausible meaning (reasonable person)
 - dictionaries
 - Interpretation Acts
- **Purpose Analysis** - looking within the text to determine the object of the statute/provision (i.e. penal/benefits-conferring); mischief/remedy
 - title; preamble; purpose statement...
- **Scheme Analysis** - looking within the context of the Act (other words/sections) to construe meaning/intent
 - title; preamble; purpose statement; marginal/head notes...
 - rule of effectivity (*Riddell*) - every word is there for a reason
 - associated meaning; unity of expression; basket clauses...
 - referential incorporation
- **External Context** - looking outside the "four corners" of the legislation to construe legislative intent
 - legislative history (Hansard, reports, etc.)
 - legislative evolution (declaratory v. substantial amendments)
 - extrinsic aids - academics, judicial notice...
 - general history; social context/policy...
 - common law presumptions - temporality/vest rights...
 - horizontal/vertical coherence - *Charter* values...
- **Consequentialist Reasoning** - looking at the outcomes flowing from a particular interpretation
 - absurdity principle; anomalous results; policy...

Application of Principles to Case Law

SEE APPENDIX