

**Sullivan
on the
Construction of Statutes**

Fifth Edition

by

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LexisNexis®

domestic offences; it would have been much easier to do so directly, and I cannot imagine why it would have done so in the General Part of the *Code*.²⁶

Although LaForest J. was dissenting, his analysis here is exemplary. In reaching its conclusion, the majority in *Finta* did not address this point.

THE PRESUMPTION AGAINST TAUTOLOGY

Governing principle. It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain.²⁷ Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose. In *Hill v. William Hill (Park Lane) Ltd.*, Viscount Simons wrote:

[A]lthough a Parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has already been said once, this repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out.²⁸

In *R. v. Proulx*, Lamer C.J. wrote:

It is a well accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage.²⁹

As these passages indicate, every word and provision found in a statute is supposed to have a meaning and a function. For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.³⁰

²⁶ *Supra* note 24, at para. 35.

²⁷ *Quebec (Attorney General) v. Carrières Ste. Thérèse Ltée*, [1985] S.C.J. No. 37, [1985] 1 S.C.R. 831, at 608 (S.C.C.).

²⁸ [1949] A.C. 530, at 546 (H.L.).

²⁹ [2000] S.C.J. No. 6, [2000] 1 S.C.R. 61, at para. 28 (S.C.C.).

³⁰ See *Winters v. Legal Services Society*, [1999] S.C.J. No. 49, [1999] 3 S.C.R. 160, at para. 48 (S.C.C.): "The appellant's position would render [certain] words superfluous. This cannot have been the intention of the legislature ... *Rizzo Shoes* ... makes it clear that all words in a statute must be given meaning." *Morguard Properties Ltd. v. Winnipeg (City)*, [1983] S.C.J. No. 84, [1983] 2 S.C.R. 493, at 504 (S.C.C.): "Some meaning must be attributed to the word ... as otherwise it is mere surplusage, and courts in the application of the principles of statutory construction endeavour, where possible, to attribute meaning to each word employed by the Legislature in the statute." *Communities Economic Development Fund v. Canadian Pickles Corp.*, [1991] S.C.J. No. 89, [1991] 3 S.C.R. 388, [1992] 1 W.W.R. 193, at 209 (S.C.C.): "It is a principle of statutory interpretation that every word of a statute must be given meaning". See also *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, [2006] S.C.J. No. 20, [2006] 1 S.C.R. 715, at paras. 45-46 (S.C.C.); *R. v. Shubley*, [1990] S.C.J. No. 1, [1990] 1 S.C.R. 3, 74

The presumption a variety of purposes provisions,³³ to dete to clarify the relati both to individual paragraphs and sect Charter and other c
In *R. v. Kelly*³⁹ against tautology t s. 426(1) of the *Cri* of an offence if, wh

C.R. (3d) 1, at 19 [1990] 2 F.C. 409, ; *pra* note 27, at 6 [1979] S.C.J. No. 1

³¹ See, for example, (S.C.C.).

³² See, for example, 1 *Medovarski v. Cana* 2 S.C.R. 539, at par at para. 62 (S.C.C. (S.C.C.); *R. v. Z. (. Davidson v. Canada* N.R. 268, at 269 (F *Health & Welfare*), No. 538, [1989] 3 F at 431 (T.D.).

³³ See, for example, *R. v. Z. (. Davidson v. Canada* N.R. 268, at 269 (F *Health & Welfare*), No. 538, [1989] 3 F at 431 (T.D.).

³⁴ See, for example, *M [2006] 2 S.C.R. 846* S.C.J. No. 49, [1999] *Canada (Minister of Grini v. Grini*, [196 [1992] S.C.J. No. 18,

³⁵ See, for example, *R. v. Proulx*, *supra* r 504-05; *R. v. Chaul* (S.C.C.); *Menzies v.* paras. 45, 48-49 (*Ma*

³⁶ See, for example, *De* 75, [1998] 3 S.C.R. ! (*Attorney General*), [O.J. No. 1818, 75 O.F

³⁷ See *Saskatchewan (F* [1989] 2 S.C.R. 1297,

³⁸ See, for example, *Ma* at 215 (S.C.C.).

³⁹ [1992] S.C.J. No. 53,

The presumption against tautology is invoked by the courts frequently and for a variety of purposes: to reveal ambiguity³¹ or resolve it,³² to infer the purpose of provisions,³³ to determine the scope of general terms, powers or conditions,³⁴ and to clarify the relation between the provisions of one or more Acts.³⁵ It applies both to individual words and phrases and to larger units of legislation such as paragraphs and sections³⁶ and to parts of the legislative scheme.³⁷ It applies to the Charter and other constitutional instruments as well as to ordinary legislation.³⁸

In *R. v. Kelly*³⁹ the Supreme Court of Canada relied on the presumption against tautology to help determine the elements of the offence created by s. 426(1) of the *Criminal Code*. That subsection provided that a person is guilty of an offence if, while acting as an agent, he or she "corruptly ... agrees to accept

C.R. (3d) 1, at 19 (S.C.C.); *Swan v. Canada (Minister of Transport)*, [1990] F.C.J. No. 114, [1990] 2 F.C. 409, at 431 (T.D.); *Quebec (Attorney General) v. Carrières Ste-Thérèse Ltée, supra* note 27, at 608; *Goulbourn (Township) v. Ottawa-Carleton (Regional Municipality)*, [1979] S.C.J. No. 118, [1990] 1 S.C.R. 496, at 7, 13 (S.C.C.).

³¹ See, for example, *R. v. B. (G.) (No. 1)*, [1990] S.C.J. No. 59, [1990] 2 S.C.R. 3, at 27-29 (S.C.C.).

³² See, for example, *R. v. Clark*, [2005] S.C.J. No. 4, [2005] 1 S.C.R. 6, at para. 51 (S.C.C.); *Medovski v. Canada (Minister of Citizenship and Immigration)*, [2005] S.C.J. No. 31, [2005] 2 S.C.R. 539, at paras. 31, 39 (S.C.C.); *R. v. Daoust*, [2004] S.C.J. No. 7, [2004] 1 S.C.R. 217, at para. 62 (S.C.C.); *Re Therrien*, [2001] S.C.J. No. 36, [2001] 2 S.C.R. 3, at para. 120 (S.C.C.); *R. v. Z. (D.A.)*, [1992] S.C.J. No. 80, [1992] 2 S.C.R. 1025, at 1044-48 (S.C.C.); *Davidson v. Canada (Board of Referees, Unemployment Insurance)*, [1987] F.C.J. No. 536, 80 N.R. 268, at 269 (F.C.A.); *Extencicare Health Services Inc. v. Canada (Minister of National Health & Welfare)*, [1987] F.C.J. No. 819, 15 F.T.R. 187, at 190-91 (T.D.); *revd* [1989] F.C.J. No. 538, [1989] 3 F.C. 593 (F.C.A.); *Swan v. Canada (Minister of Transport)*, *supra* note 30, at 431 (T.D.).

³³ See, for example, *R. v. Hinchey*, [1996] S.C.J. No. 121, [1996] 3 S.C.R. 1128, at para. 20 (S.C.C.); *Reference re Criminal Code (Canada), Sections 193 & 195(1)(c)*, [1990] S.C.J. No. 52, [1990] 4 W.W.R. 481, at 553 (S.C.C.).

³⁴ See, for example, *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] S.C.J. No. 58, [2006] 2 S.C.R. 846, at paras. 36, 57, 81 (S.C.C.); *Winters v. Legal Services Society*, [1999] S.C.J. No. 49, [1999] 3 S.C.R. 160, at para. 61 (S.C.C.); *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] S.C.J. No. 1, [1992] 1 S.C.R. 3, at 33-42 (S.C.C.); *Grini v. Grini*, [1969] M.J. No. 53, 5 D.L.R. (3d) 640, at 644-45 (Man. Q.B.); *R. v. Green*, [1992] S.C.J. No. 18, [1992] 1 S.C.R. 614, at 615 (S.C.C.).

³⁵ See, for example, *R. v. Daoust*, [2004] S.C.J. No. 7, [2004] 1 S.C.R. 217, at para. 52 (S.C.C.); *R. v. Proulx*, *supra* note 29; *Morguard Properties Ltd. v. City of Winnipeg*, *supra* note 30, at 504-05; *R. v. Chaulk*, [1990] S.C.J. No. 139, [1990] 3 S.C.R. 1303, 2 C.R. (4th) 1, at 76 (S.C.C.); *Menzies v. Manitoba Public Insurance Corp.*, [2005] M.J. No. 313 (Man. C.A.), at paras. 45, 48-49 (Man. C.A.).

³⁶ See, for example, *Degelder Construction Co. v. Dancorp Developments Ltd.*, [1998] S.C.J. No. 75, [1998] 3 S.C.R. 90, at para. 26 (S.C.C.); *British Columbia (Attorney General) v. Canada (Attorney General)*, [1994] S.C.J. No. 35, [1994] 2 S.C.R. 41 (S.C.C.); *R. v. C. (C.)*, [1990] O.J. No. 1818, 75 O.R. (2d) 187, at 190 (Ont. C.A.); *R. v. Shubley*, *supra* note 30, at 19.

³⁷ See *Saskatchewan (Human Rights Commission) v. Saskatoon (City)*, [1989] S.C.J. No. 127, [1989] 2 S.C.R. 1297, at 489 (S.C.C.).

³⁸ See, for example, *Mahe v. Alberta*, [1990] S.C.J. No. 19, [1990] 1 S.C.R. 342, 46 C.R.R. 193, at 215 (S.C.C.).

³⁹ [1992] S.C.J. No. 53, [1992] 2 S.C.R. 170 (S.C.C.).

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... any reward, advantage or benefit" as consideration for an act or omission that affects the principal's affairs. The Court was asked whether an agent, to be guilty of the offence, must do something more than accept a benefit in return for an act or omission that affects the principal. The majority of the Court said yes, on the ground that some meaning must be given to the word "corruptly". Cory J. wrote:

The interpretation of the word "corruptly" must take place within the context of s. 426 itself. It is a trite rule of statutory interpretation that every word in the statute must be given a meaning. It would be superfluous to include "corruptly" in the section if the offence were complete upon the taking of the benefit in the circumstances described by the section. The word must add something to the offence.⁴⁰

The Court concluded that the word "corruptly" as used in the section was intended to make secrecy an essential element of the offence.

In *Chrysler Canada Ltd. v. Canada (Competition Tribunal)*,⁴¹ the Supreme Court of Canada relied on the presumption against tautology to help rebut the presumption against changing the common law. The issue in the case was whether s. 8 of the *Competition Tribunal Act* gave the Tribunal jurisdiction to enforce its orders through punishment for contempt *ex facie curiae*. At common law this jurisdiction is reserved to superior courts. Under s. 8(1) of the Act, the Tribunal had "jurisdiction to hear and determine all applications made under Part VII of the *Competition Act* and any matters related thereto". Under s. 8(2) it had the powers, rights and privileges of a superior court in relation to all matters necessary or proper for the due exercise of its jurisdiction.

The majority of the Court concluded that although s. 8 did not confer jurisdiction to punish for contempt *ex facie curiae* in so many words, it did so by necessary implication. Its reasoning was based in part on the need to give meaning to the expression "any matters relating thereto" in s. 8(1). Gonthier J. explained:

The respondent claimed that the phrase "any matters related thereto" essentially added to the Tribunal's jurisdiction various ancillary matters that may arise in the course of the hearing of an application. Such an interpretation would, in my opinion, fail to give its full meaning to s. 8(1) *CTA*. It is an established principle of common law, codified to a certain extent in s. 31 of the *Interpretation Act*, R.S.C., 1985, c. I-21, that "[t]he powers conferred by an enabling statute include not only such as are expressly granted but also, by implication, all powers which are reasonably necessary for the accomplishment of the object intended to be secured".... Since the Tribunal has jurisdiction to hear and determine Part VIII applications, the common law would have conferred upon it jurisdiction over incidental and ancillary matters arising in the course of the hearing and determination. No need would arise to add the phrase "and any matters related thereto".

⁴⁰ *Ibid.*, at 188. See also *R. v. Sharpe*, [2001] S.C.J. No. 3, [2001] 1 S.C.R. 45, at para. 45 (S.C.C.).

⁴¹ [1992] S.C.J. No. 64, [1992] 2 S.C.R. 394 (S.C.C.).

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The *Chrysler* knowledge with first that the tribunals (presumably conferring a pathology).⁴³

Rebuttal. Although also easily rebutted the words in question. In *R. v. Birney* the appeal from the *Criminal Code* the following grounds

- (i) the verdict
- (ii) the judgment of

Counsel argued (i) must refer to the Court of Canada

The reasoning of law, this inference is able...⁴⁵

Arbour J. pointed out (i) even if unreasonable, para. (i) questions of substance

⁴² *Ibid.*, at 410-11.

⁴³ For similar reasons (Ont. C.A.); *Templeton v. Ontario (Att. Gen.)*, [1987] 1 O.R. (3d) 609, at para. 10 (O.C.A.); *Development Fund v. Ontario (Att. Gen.)*, [2000] S.C.J. No. 10 (S.C.C.).

⁴⁴ [2000] S.C.J. No. 10 (S.C.C.).

⁴⁵ *Ibid.*, at para. 29.

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Since this phrase should be given some meaning, it should be taken as a grant of jurisdiction over matters related to Part VIII applications, but arising *outside* of the hearing and determination of these applications. These matters may include for instance the enforcement of the orders made under Part VIII.⁴²

The *Chrysler* case illustrates the frequent interaction of the presumption of knowledge with the presumption against tautology. The Court here presumes first that the legislature is aware of the law governing powers conferred on tribunals (presumption of knowledge) and second that it would not waste words by conferring a power on a tribunal that it already enjoys (presumption against tautology).⁴³

Rebuttal. Although the presumption against tautology is frequently invoked, it is also easily rebutted. This is done by coming up with a meaning or function for the words in question, to show that they are not in fact meaningless or superfluous. In *R. v. Biniaris*,⁴⁴ for example, counsel argued that in order to avoid tautology the appeal against an unreasonable verdict referred to in s. 686(1) of the *Criminal Code* must be an appeal on a question of fact. The section referred to the following grounds for appeal:

- (i) the verdict should be set aside on the ground that it is unreasonable...,
- (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law....

Counsel argued that since para. (ii) effectively covered questions of law, para. (i) must refer to something else. This argument did not succeed in the Supreme Court of Canada. Arbour J. wrote:

The reasoning is that if [the appeal from an unreasonable verdict] were a question of law, there would be no need for both s. 686(1)(a)(i) and s. 686(1)(a)(ii).... This inference from the wording of the two subsections is far from inescapable....⁴⁵

Arbour J. pointed out several reasons why it would make sense to include para. (i) even if unreasonable verdicts were treated as raising a question of law. For example, para. (ii) arguably refers to decisions of the trial judge on specific questions of substantive law, procedure and evidence arising during the course

⁴² *Ibid.*, at 410-11.

⁴³ For similar reasoning, see *Trick v. Trick*, [2006] O.J. No. 2737, 81 O.R. (3d) 241, at para. 45 (Ont. C.A.); *Temelini v. Ontario Provincial Police (Commissioner)*, [1999] O.J. No. 1876, 44 O.R. (3d) 609, at 618 (Ont. C.A.); *Davidson v. Canada (Board of Referees, Unemployment Insurance)*, [1987] F.C.J. No. 536, 80 N.R. 268, at 269 (F.C.A.) and *Communities Economic Development Fund v. Canadian Pickles Corp.*, *supra* note 30, at 23-24 (S.C.C.).

⁴⁴ [2000] S.C.J. No. 16, [2000] 1 S.C.R. 381 (S.C.C.).

⁴⁵ *Ibid.*, at para. 29.

of trial whereas para. (i) refers to conclusion of the judge or jury on the ultimate issue of guilt or innocence.⁴⁶

The presumption can also be rebutted by suggesting reasons why in the circumstances the legislature may have wished to be redundant or to include superfluous words. Drafters sometimes anticipate potential misunderstandings or problems in applying the legislation and, in an effort to forestall these difficulties, resort to repetition or the inclusion of unnecessary detail.⁴⁷ Repetition or superfluous words may also be introduced to make the legislation easier to read or work with or, in the case of bilingual legislation, to preserve parallelism between the two language versions. Repetition is not an evil when it serves an intelligible purpose. When tautologous words are deliberately included in legislation for reasons such as these, the courts say they are added *ex abundanti cautela*, out of an abundance of caution, and the presumption against tautology is rebutted.

In the *Chrysler* case, for example, McLachlin J. in her dissenting judgment conceded that the phrase "and any matters related thereto" appearing in the *Competition Tribunal Act* would be unnecessary if its only function were to confer ancillary powers on the Tribunal. However, in her view,

one must approach such general phrases against the background that they are commonly used in many statutes, not to confer unmentioned powers, but to ensure that the powers clearly given be exercised without undue restraint. It is true, as Gonthier J. points out, that ancillary powers can be inferred and need not be set out. *Yet the reality is that statutes commonly do set them out, if only in the hope of avoiding arguments seeking to unduly restrict the effective exercise of expressly conferred powers....* Given the relatively common use of phrases like "and all [or any] matters related thereto" in legislative drafting, I do not find [Mr. Justice Gonthier's] argument persuasive.⁴⁸

[Author's emphasis]

When there is reason to believe that the tautologous words were deliberately included in the legislation, the presumption is rebutted.

THE PRESUMPTION OF CONSISTENT EXPRESSION

It is presumed that the legislature uses language carefully and consistently so that within a statute or other legislative instrument the same words have the

⁴⁶ *Ibid.*; see also *Zaidan Group Ltd. v. London (City)*, [1990] O.J. No. 33, 64 D.L.R. (4th) 514 (Ont. C.A.); *affid* [1991] S.C.J. No. 92, [1991] 3 S.C.R. 593 (S.C.C.); *Clarke v. Clarke*, [1990] S.C.J. No. 97, [1990] 2 S.C.R. 795, at 16 (S.C.C.); *Firestone Canada Inc. v. Ontario (Pension Commission)*, [1990] O.J. No. 1377, 74 O.R. (2d) 325, at 339 (Ont. H.C.J.); *revd* [1990] O.J. No. 2316, 1 O.R. (3d) 122 (Ont. C.A.).

⁴⁷ See, for example, *R. v. Hinchey*, [1996] S.C.J. No. 121, [1996] 3 S.C.R. 1128, at para. 55 (S.C.C.): "...the additional words are not intended to add to the meaning of benefit, but to prevent the meaning ... from being restricted."

⁴⁸ *Supra* note 41, at 435.

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⁴⁹ [1989] S.C.J.

⁵⁰ [1992] S.C.J.

⁵¹ *Ibid.*, at 243-4

same meaning and different words have different meanings. Another way of understanding this presumption is to say that the legislature is presumed to avoid stylistic variation. Once a particular way of expressing a meaning has been adopted, it is used each time that meaning is intended. Given this practice, it makes sense to infer that where a different form of expression is used, a different meaning is intended.

The presumption of consistent expression applies not only within statutes but across statutes as well, especially statutes or provisions dealing with the same subject matter.

Same words, same meaning. In *R. v. Zeolkowski*, Sopinka J. wrote: "Giving the same words the same meaning throughout a statute is a basic principle of statutory interpretation."⁴⁹ Reliance on this principle is illustrated in the majority judgment of the Supreme Court of Canada in *Thomson v. Canada (Deputy Minister of Agriculture)*.⁵⁰ The issue there was whether a Deputy Minister of the federal government could deny security clearance to a person, contrary to the recommendation made by the Security Intelligence Review Committee after reviewing the person's file. The governing provision was s. 52(2) of the *Canadian Security Intelligence Act* which provided that on completion of its investigation, the Review Committee shall provide the Minister "with a report containing any recommendations that the Committee considers appropriate". The majority held that the ordinary meaning of the word "recommendations" is advice or counsel and that mere advice or counsel is not binding on the Minister. However, Cory J. added:

There is another basis for concluding that "recommendations" should be given its usual meaning in s. 52(2).

The word is used in other provisions of the Act. Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an Act. Section 52(1) directs the Committee to provide the Minister and Director of CSIS with a report ... and any "recommendations" that the Committee considers appropriate....

It would be obviously inappropriate to interpret "recommendations" in s. 52(1) as a binding decision. This is so, since it would result in the Committee encroaching on the management powers of CSIS. Clearly, in s. 52(1) "recommendations" has its ordinary and plain meaning of advising or counselling. Parliament could not have intended the word "recommendations" in the subsequent subsection of the same section to receive a different interpretation. The word must have the same meaning in both sections.⁵¹

The reasoning of Cory J. is exemplary. He first notes that elsewhere in the legislation the word or expression to be interpreted has a single clear meaning;

⁴⁹ [1989] S.C.J. No. 50, [1989] 1 S.C.R. 1378, at 732 (S.C.C.).

⁵⁰ [1992] S.C.J. No. 13, [1992] 1 S.C.R. 385 (S.C.C.).

⁵¹ *Ibid.*, at 243-44.

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1996] 3 S.C.R. 1128, at para. 55
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he then invokes the presumption of consistent expression to justify his conclusion that this meaning must prevail throughout. Finally, he points out that the presumption applies with particular force where the provisions in which the repeated words appear are close together or otherwise related. This way of resolving interpretation problems is often relied on in the cases.⁵²

Different words, different meaning. Given the presumption of consistent expression, it is possible to infer from the use of different words or a different form of expression that a different meaning was intended. As Malone J.A. explains in *Peach Hill Management Ltd. v. Canada*:

When an Act uses different words in relation to the same subject such a choice by Parliament must be considered intentional and indicative of a change in meaning or a different meaning.⁵³

This reasoning was relied on in several Supreme Court of Canada decisions interpreting the insanity defence provisions of the *Criminal Code*. Section 16(1) provides that a person is insane only if he or she is "incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong". In *R. v. Schwartz*, Dickson J. argued that the word "wrong" must mean morally wrong and not illegal because elsewhere in the Code the term "unlawful" is used to express the idea of illegality; by using the word "wrong" the legislature must have meant to express a different idea.⁵⁴ In *R. v. Barnier*⁵⁵ the issue was whether the trial judge had erred in instructing the jury that the words "appreciating" and "knowing" in s. 16(2) mean the same thing. Estey J. wrote:

One must, of course, commence the analysis of a statutory provision by seeking to attribute meaning to all the words used therein. Here Parliament has employed two different words in the critical portion of the definition, which words in effect established two tests or standards in determining the presence of insanity.... Under the primary canon of construction to which I have referred, "appreciating"

⁵² See, for example, *Sero v. Canada*, [2004] F.C.J. No. 71, at paras. 35-36 (F.C.A.); *R. v. Knoblauch*, [2000] S.C.J. No. 59, [2000] 2 S.C.R. 780, at para. 85 (S.C.C.); *Canada v. Schwartz*, [1996] S.C.J. No. 15, [1996] 1 S.C.R. 254 (S.C.C.); *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85, at 123-24 (S.C.C.); *Henrietta Muir Edwards v. A.G. for Canada*, [1930] A.C. 124, at 124 (P.C.); *Wishing Star Fishing Co. v. "B.C. Baron" (The)*, [1987] F.C.J. No. 1149, 81 N.R. 309, at 313 (F.C.A.); *R. v. Budget Car Rentals (Toronto) Ltd.*, [1981] O.J. No. 2888, 20 C.R. (3d) 66, at 82 (Ont. C.A.).

⁵³ [2000] F.C.J. No. 894, 257 N.R. 193, at para. 12 (F.C.A.).

⁵⁴ [1976] S.C.J. No. 40, [1977] 1 S.C.R. 673, at 677-90 (S.C.C.), per Dickson J. dissenting; approved by Lamer C.J. for the majority of the Court in *R. v. Chaulk*, supra note 35, at 39-41. See also *Frank v. The Queen*, [1977] S.C.J. No. 42, [1978] 1 S.C.R. 95, at 101 (S.C.C.), per Dickson J.: "I do not think 'Indians of the Province' and 'Indians within the boundaries thereof' refer to the same group. The use of different language suggests different groups."; *Mitchell v. Peguis Indian Band*, supra note 52, at 123, per La Forest J.: "... whenever Parliament meant to include Her Majesty in right of a province, it was careful to make it clear by using explicit terms. In the absence of such specific indication, ... one would expect that an unqualified reference to 'Her Majesty' should be taken as limited to the federal Crown."

⁵⁵ [1980] S.C.J. No. 33, [1980] 1 S.C.R. 1124 (S.C.C.).

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⁵⁶ *Ibid.*, at 1135-36. See
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[1999] S.C.J. No. 31, [1
[2005] S.C.J. No. 4, [2

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and "knowing" must be different, otherwise the Legislature would have employed one or the other only.⁵⁶

As this passage from the *Barnier* case indicates, the presumption that using different words implies an intention to express different meanings is often reinforced by the presumption against tautology. In *R. v. Clark*,⁵⁷ for example, the issue was whether performing an indecent act in an illuminated room near an uncovered window violated s. 173(1)(a) of the *Criminal Code*. The relevant provisions were in the following terms:

150. In this Part,

...

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

173. (1) Every one who wilfully does an indecent act

(a) in a public place in the presence of one or more persons,

...

is guilty of an offence punishable on summary conviction.

174.(1) Every one who, without lawful excuse,

(a) is nude in a public place, or

(b) is nude and exposed to public view while on private property, ...

is guilty of an offence punishable on summary conviction.

The Supreme Court of Canada held that although the indecent act in question was witnessed by two neighbours who were peeking through their windows into the accused's apartment, the act had not been done in a public place. In reaching this conclusion, Fish J. relied on both the presumption against tautology and the presumption of consistency:

Section 174(1) makes it perfectly clear that the definition of "public place" in s. 150 of the *Criminal Code* was not meant to cover private places exposed to public view. Were it otherwise, s. 174(1)(b) would be entirely superfluous.

Section 150 applies equally to s. 174(1) and s. 173(1)(a). If "public place" does not, for the purposes of s. 174(1), include private places exposed to public view, this must surely be the case as well for s. 173(1)(a). And I hasten to emphasize that ss. 173(1) and 174 of the *Criminal Code* were enacted in their present form *simultaneously*, as ss. 158 and 159, when the present *Code* was revised and enacted as S.C. 1953-54, c. 51. Parliament could not have intended that identical

⁵⁶ *Ibid.*, at 1135-36. See also *Marche v. Halifax Insurance Co.*, [2005] S.C.J. No. 7, [2005] 1 S.C.R. 47, at paras. 93-94 (S.C.C.); *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] S.C.J. No. 31, [1999] 2 S.C.R. 625, at paras. 134-35 (S.C.C.).

⁵⁷ [2005] S.C.J. No. 4, [2005] 1 S.C.R. 6 (S.C.C.).

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words should have different meanings in two consecutive and related provisions of the very same enactment.⁵⁸

[Emphasis in original]

The reasoning here is persuasive and is consistent with any purposive or consequential analysis the court might undertake.

Recurring pattern of expression.⁵⁹ The presumption of consistent expression applies not only to individual words, but also to patterns of expression. In *Kirkpatrick v. Maple Ridge (District)*,⁶⁰ for example, the Supreme Court of Canada was concerned with a provision of British Columbia's *Municipal Act* which conferred on municipalities a power to require permits for the removal of soil or other substances and to "fix a fee for the permit". The question was whether this authorized the imposition of a flat fee for all holders, a fee proportionate to the amount of substance removed by each holder, or both. In concluding that the fee must be flat, the Court relied on the pattern apparent in the Act of setting out the basis for differential fees when such fees were contemplated, but simply providing for the imposition of the fee when the same rate was to be charged to all. La Forest J. wrote:

The foregoing [conclusion] is strongly fortified by the terms of other taxing and licensing provisions in the Act.... Under s. 612(2), a council may vary the charge for sewerage or combined sewerage and drainage facilities in accordance with a number of outlets served and the quantity of water delivered. Development cost charges "may vary in respect of different defined or specified areas ... and sizes or number of units or lots ..." (s. 719(5)). Municipal councils are even empowered to vary the amount of the fees for dog licences according to sex, age, size or breed (s. 524). Flat fees have been set for many other licences (ss. 505(1), 520(1))....⁶¹

La Forest J. concluded that since the legislature had chosen the formula ordinarily used to authorize a flat fee, in contrast to the formula ordinarily used when the legislature intended to authorize differential fees, the only plausible inference was that in this case the legislature intended to authorize a flat fee.

Similar reasoning is found in *Canada v. Antosko*,⁶² where the Supreme Court of Canada had to interpret s. 20(14) of the *Income Tax Act*. It provided that

⁵⁸ *Ibid.*, at paras. 50-51. See also *R. v. Daoust*, [2004] S.C.J. No. 7, [2004] 1 S.C.R. 217, at paras. 62-63 (S.C.C.); *343091 Canada Inc. v. Canada (Minister of Industry)*, [2001] F.C.J. No. 1327, [2002] 1 F.C. 421 (F.C.A.), leave to appeal dismissed [2001] S.C.C.A. No. 537, at para. 50: "... by exempting 'advice and recommendations' from disclosure, Parliament must be taken to have intended the former to have a broader meaning than the latter; otherwise it would be redundant."

⁵⁹ For discussion of patterns of express reference, see *infra* pp. 246ff.

⁶⁰ [1986] S.C.J. No. 47, [1986] 2 S.C.R. 124 (S.C.C.).

⁶¹ *Ibid.*, at 129. See also *Contino v. Leonelli-Contino*, [2005] S.C.J. No. 65, [2005] 3 S.C.R. 217, at paras. 23-24 (S.C.C.); *Montreal (City) v. Civic Parking Centre Ltd.*, [1981] S.C.J. No. 96, [1981] 2 S.C.R. 541 (S.C.C.).

⁶² [1994] S.C.J. No. 46, [1994] 2 S.C.R. 312 (S.C.C.).

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⁶⁴ *Supra* note

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when title in an interest-bearing security passes from transferor to transferee and interest accrued before the day of transfer is paid to the transferee, that amount

- (a) shall be included in computing the transferor's income for the taxation year in which the transfer was made, and
- (b) may be deducted in computing the transferee's income for a taxation year in the computation of which there has been included [certain interest payments].

The issue was whether a transferee could have the benefit of para. (b) even though the transferor was not obliged to include the pre-transfer interest in its own income as contemplated by para. (a). The Court held that para. (b) applied independently of para. (a). Iacobucci J. wrote:

In this regard I find helpful the comments of M.D. Templeton ...⁶³

The grammatical structure of subsection 20(14) is similar to a number of other provisions in the Act in which Parliament lists the income tax consequences that arise when certain preconditions are met. Usually, the preconditions are set out in an introductory paragraph or paragraphs and the consequences in separate subparagraphs. We do not know of any canon of statutory interpretation that makes a tax consequence listed in the text of a provision subject to the taxpayer's compliance with all the other tax consequences listed before it.

To carry this observation further, where specific provisions of the *Income Tax Act* intend to make the tax consequences for one party conditional on the acts or position of another party, the sections are drafted so that this interdependence is clear: see, e.g., ss. 68, 69(5), 70(2), (3) and (5).⁶⁴

Iacobucci J. here describes a convention for drafting provisions in which tax consequences depend on the fulfilment of certain preconditions. A special pattern is used when the tax consequences of one person are conditional on another's circumstances. When this pattern is not used, the interpreter can fairly infer that such interdependence was not intended.

Counterfactual argument. The reasoning of Iacobucci J. in *Antosko* forms the basis for a form of argument that is frequently found in statutory interpretation, here labelled counterfactual argument. In this form of argument, X claims that Y's interpretation is implausible because if that were what the legislature intended, it would have expressed itself in a different way. X justifies this claim by pointing out examples of what the legislature says when it does intend what Y is claiming.

In *Miller, McClelland Ltd. v. Barrhead Savings & Credit Union Ltd.*,⁶⁵ for example, the issue was whether a creditor lost his security interest because he

⁶³ See M.D. Templeton, "Subsection 20(14) and the Allocation of Interest — Buyers Beware" (1990), 38 Can. Tax J. 85, at pp. 87-88.

⁶⁴ *Supra* note 62, at 332.

⁶⁵ [1995] A.J. No. 167 (Alta. C.A.).

registered the security under the name he used in practice (James Smith) as opposed to the name on his birth certificate (Robert James Smith). Subsection 17(1) of the *Personal Property Regulations* provided:

If a debtor or secured party is an individual, the registering party shall specify the last name of that individual followed by his first name and middle name, if any.

The court held that "first name" could refer to the customarily used first name:

The term "first name" is not defined. The *Vital Statistics Act* ... describes the name on the birth certificate as the "given name." The *Change of Name Act* ... defines "name" to mean ... a given name or surname or both." Had the legislators intended to circumscribe the registration requirement under the P.P.S.A. regulations as suggested, no doubt they would have adopted the more precise term "given name" found in other provincial legislation.⁶⁶

When the pattern on which a counterfactual argument is based is express reference to something, the implied exclusion maxim comes into play.⁶⁷ In *Ordon Estate v. Grail*,⁶⁸ for example, the Supreme Court of Canada had to determine whether the Ontario Court (General Division) had concurrent jurisdiction with the Federal Court, Trial Division over maritime fatal accident claims by dependants under s. 646 of the *Canada Shipping Act*. In concluding that it did, Iacobucci and Major JJ. wrote:

As noted by the Court of Appeal below, when Parliament intended the Federal Court to have exclusive jurisdiction to adjudicate a particular matter in the *Canada Shipping Act*, it set this intention out in clear language in the Act. For example, ss. 209(2) and 453, as well as the newly enacted s. 580(1) (see S.C. 1998, c. 6, s. 2), state:

209. ...

- (2) Subject to this Part, no other court in Canada [referring to the Admiralty Court] has jurisdiction to hear or determine any action, suit or proceeding instituted by or on behalf of any seaman or apprentice for the recovery of wages in any amount.

...

- 453. Disputes respecting salvage, whether of life or property, shall be heard and determined by and before the receiver of wrecks or the Admiralty Court, as provided for respectively by this Part, and not otherwise.

...

⁶⁶ *Ibid.*, at para. 8. See also *Kerr v. Danier Leather Inc.*, [2005] O.J. No. 5388, 77 O.R. (3d) 321, at paras. 94-95 (Ont. C.A.); *Toronto Taxi Alliance Inc. v. Toronto (City)*, [2005] O.J. No. 5460, 77 O.R. (3d) 721, at para. 32. (Ont. C.A.).

⁶⁷ This maxim is discussed *infra* at pp. 243ff.

⁶⁸ [1998] S.C.J. No. 84, [1998] 3 S.C.R. 437 (S.C.C.).

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⁶⁹ *Ibid.*, at para. 60.

⁷⁰ [2001] F.C.J. No. 1151 [2003] 1 S.C.R. 476 (S (N.B.C.A.), where Dra related, it makes emine the use or operation' fe in s. 232(1)." [Bracket: ter of Agriculture), sup

⁷¹ [1988] S.C.J. No. 72, [

⁷² *Ibid.*, at 667.

- 580. (1) The Admiralty Court has exclusive jurisdiction with respect to any matter in relation to the constitution and distribution of a limitation fund pursuant to Articles 11 to 13 of the Convention.

By contrast, s. 646 makes no express reference to exclusivity of jurisdiction in the Admiralty Court. In our opinion, if it was intended that s. 646 should grant exclusive jurisdiction to the Admiralty Court in maritime fatal accident claims, language similar to that in ss. 209(2), 453 and 580(1) would have been used.⁶⁹

Factors affecting weight of presumption. The presumption of consistent expression varies in strength depending on a range of factors. An important consideration is the proximity of the words to one another. As Rothstein J.A. wrote in *Barrie Public Utilities v. Canadian Cable Television Assn.*, words in a statute may have different meanings depending on the context in which they are used, but “it seems unlikely that Parliament intended that a term in a single subsection should have different meanings depending upon different factual circumstances.”⁷⁰ Other considerations include how often the language in question is repeated in the legislation, the similarity of the contexts in which it is repeated, the extent to which it constitutes a distinctive pattern of expression, whether the legislation appears to have been carefully drafted, and how often it has been amended.

In *Mattabi Mines Ltd. v. Ontario (Minister of Revenue)*,⁷¹ the Supreme Court of Canada insisted that the word “income” must have the same meaning throughout Part II of the *Income Tax Act* because formulating an exact definition of “income” and then indicating how it is to be taxed was the central concern of that Part. Wilson J. wrote:

... a taxing statute is a highly technical piece of legislation which requires an interpretation that will ensure certainty for the taxpayer. Many of the words used carry a very specific and technical meaning because they identify the fundamental concepts underpinning the legislation. “Income” is one of those fundamental concepts.⁷²

As Wilson J. suggests, technical terms and terms that play a key role in a legislative scheme are strongly presumed to have the same meaning throughout. The

⁶⁹ *Ibid.*, at para. 60.

⁷⁰ [2001] F.C.J. No. 1150, [2001] 4 F.C. 237, at para. 23 (F.C.A.); *affd* [2003] S.C.J. No. 27, [2003] 1 S.C.R. 476 (S.C.C.). See also *LeBlanc v. Boisvert*, [2005] N.B.J. No. 561, at para. 51 (N.B.C.A.), where Drapeau, C.J.N.B. wrote: “Because sections 265.1 and 232(1) are so closely related, it makes eminent good sense to attribute the same meaning to the phrase ‘arising out of the use or operation’ found in s. 265(1) and the phrase ‘arising from the [...] use or operation’ in s. 232(1).” [Brackets and ellipsis in original]. And see *Thompson v. Canada (Deputy Minister of Agriculture)*, *supra* note 50, at 243-44.

⁷¹ [1988] S.C.J. No. 72, [1988] 2 S.C.R. 175 (S.C.C.).

⁷² *Ibid.*, at 667.

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⁶⁷ O.J. No. 5388, 77 O.R. (3d) 321,
Toronto (City), [2005] O.J. No. 5460,

presumption is also strong where the repeated words are unusual or distinctive or contribute to a noticeable pattern.

One problem with the presumption of consistent expression is that it does not necessarily reflect the realities of legislative drafting. Much legislation is lengthy and complicated; there is not always time for careful editing. Amendments that are made in committee and based on political compromise are often drafted with little regard for the niceties of style. Some statutes, like Insurance Acts or the *Criminal Code*, are frequently amended decade after decade. It is not surprising, then, that inadvertent variations occur within a single Act.⁷³ It is even more likely that they would occur within the statute book as a whole.

A second problem with the presumption, as pointed out by Côté, is that it conflicts to some extent with the contextual principle in interpretation, which emphasizes that meaning is dependent on context.⁷⁴ Identical words may not have identical meanings once they are placed in different contexts and used for different purposes.⁷⁵ This is particularly true of general or abstract words. These factors tend to weaken the force of the presumption so that in many cases the courts assign it little weight.⁷⁶

Finally, like all the presumptions of interpretation, it must be weighed against relevant competing considerations. A good example is found in the dissenting judgment of Dickson C.J. in *Mitchell v. Peguis Indian Band*.⁷⁷ One of the issues in the case was whether the expression "Her Majesty" in s. 90(1)(b) of the *Indian Act* referred solely to the federal Crown or included provincial Crowns as well. Dickson C.J. conceded that in s. 90(1)(a) the words "Her Majesty" were clearly limited to the Crown in right of Canada and that this usage was found in many places in the Act. He also conceded that elsewhere in the Act other ex-

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⁷³ For example, see *I.R.C. v. Hinchey*, [1960] A.C. 748, at 766 (H.L.), where Lord Reid refused to infer that different words in the *Income Tax Act* implied a different meaning given that in fiscal legislation "quite incongruous provisions are lumped together and it is impossible to suppose that anyone, draftsman or Parliament, ever considered one of these sections in light of another ...". See also *Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 579 v. Construction General Labourers, Rock and Tunnel Workers, Local 1208*, [2003] N.J. No. 127, at paras. 8-9 (Nfld. C.A.).

⁷⁴ See P.-A. Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Scarborough: Carswell, 2000), p. 333.

⁷⁵ See *Jevco Insurance Co. v. Pilot Insurance Co.*, [2000] O.J. No. 2259, 49 O.R. (3d) 760, at 763 (Ont. S.C.J.); *Bapoo v. Co-operators General Insurance Co.*, [1997] O.J. No. 5055, 36 O.R. (3d) 616, at para. 28 (Ont. C.A.); *Coca Cola Ltd. v. Deputy Minister of National Revenue Customs and Excise*, [1983] A.C.F. no 143, [1984] 1 F.C. 447, at 454-56 (Fed. C.A.).

⁷⁶ See *Marche v. Halifax Insurance Co.*, [2005] S.C.J. No. 7, [2005] 1 S.C.R. 47, at para. 18 (S.C.C.); *Sommers v. R.*, [1959] S.C.J. No. 49, [1959] S.C.R. 678, at 685 (S.C.C.).

⁷⁷ [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85 (S.C.C.). See also the strong dissenting judgment in *Canada (Attorney General) v. Savard*, [1996] Y.J. No. 4 (Y.T.C.A.), where Wood J.A. appreciates the consistent pattern found in the legislation but concludes, at para. 47ff, that the presumption of consistency must give way to the clear purpose of the legislature: "Where, as here, the application of the presumption of consistent expression would give rise to a result quite inconsistent with the apparent purpose or intention of Parliament, it ought to yield, as would a good servant, rather dominate as a master" (para. 60).

⁷⁸ *Ibid.*, at 105-06.

⁷⁹ *Ibid.*, at 107. Fiction, see *Canadian* 637 (Sask. C.A. S.C.J. No. 72, [1

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⁸¹ (1611), Lane 11

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7, [2005] 1 S.C.R. 47, at para. 18

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 o the strong dissenting judgment in Y.T.C.A.), where Wood J.A. apprehends, at para. 47ff, that the principle of the legislature: "Where, as here, would give rise to a result quite in- ment, it ought to yield, as would a

expressions were used when referring to the Crown in right of the provinces. All this amounted to a strong case for applying the presumption of consistent expression. Yet Dickson C.J. refused to be bound. In his view, the arguments based on the meaning of "Her Majesty" elsewhere in the text were not conclusive.⁷⁸ He preferred to give more weight to the presumption in favour of Aboriginal peoples than to the presumption of consistent expression.⁷⁹ The latter is merely a drafting convention, whereas the former embodies an important constitutional policy.

THE PRESUMPTION OF COHERENCE

Governing principle. It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as parts of a functioning whole. The parts are presumed to fit together logically to form a rational, internally consistent framework; and because the framework has a purpose, the parts are also presumed to work together dynamically, each contributing something toward accomplishing the intended goal. This presumption is the basis for analyzing legislative schemes, which is often the most persuasive form of analysis. The presumption of coherence is also expressed as a presumption against internal conflict. It is presumed that the body of legislation enacted by a legislature does not contain contradictions or inconsistencies, that each provision is capable of operating without coming into conflict with any other. As La Forest J. wrote in *Friends of the Oldman River Society v. Canada (Minister of Transport)*:

There is a presumption that the legislature did not intend to make or empower the making of contradictory enactments.⁸⁰

In 2747-3174 *Québec Inc. v. Quebec (Régie des permis d'alcool)*, L'Heureux-Dubé J. wrote:

It must be assumed that the statute is coherent. The principle of internal statutory coherence has been recognized by the common law since the 17th century: [In *Chamberlain's Case* Tanfield J. wrote]:

... the meaning of an act of parliament ought to be expounded by an examination of the intention of the makers thereof, collected out of all the causes therein, so that there be no repugnancy, but a concordancy in all the parts thereof. . . .^[81]

⁷⁸ *Ibid.*, at 105-06.

⁷⁹ *Ibid.*, at 107. For other examples where a word was given different meanings in the same section, see *Canadian Pacific Railway Co. v. Lac Pelletier (Rural Municipality)*, [1944] 3 W.W.R. 637 (Sask. C.A.), and *Board v. Board*, [1919] A.C. 956 (P.C.). See also *Zacks v. Zacks*, [1973] S.C.J. No. 72, [1973] S.C.R. 891, [1973] 5 W.W.R. 289 (S.C.C.).

⁸⁰ [1992] S.C.J. No. 1, [1992] 1 S.C.R. 3, at 38 (S.C.C.). See also *Murphy v. Welsh*, [1993] S.C.J. No. 83, [1993] 2 S.C.R. 1069, at 1079 (S.C.C.), per Major J.

⁸¹ (1611), Lane 117, 145 E.R. 346, at 347.

I note that the modern expression of the internal coherence principle, which has been part of our law since it was reformulated by Lord Atkinson in *City of Victoria v. Bishop of Vancouver Island*,^[82] was adopted again by this Court in *Dames Religieuses de Notre Dame de Charité du Bon Pasteur v. Sunny Brae (Town) Assessors*.^[83]

In my opinion, the construction of a statute which produces such anomalies is contrary to well settled canons of construction. A statute is to be construed, if at all possible, "so that there may be no repugnancy or inconsistency between its portions or members"⁸⁴

The issue in the Quebec case was the scope of the words "person or agency exercising quasi-judicial functions" in s. 56 of Quebec's *Charter of Human Rights and Freedoms*. In her concurring judgment, L'Heureux-Dubé J. concluded that in order to produce a coherent reading of the legislation, it was necessary to narrow the scope of the words so they applied only to "persons or agencies exercising quasi-judicial functions involving matters of penal significance." [Author's emphasis]⁸⁵

The presumption of coherence applies not only to single statutes but to the statute book as a whole. This point was made by Iacobucci J. in the following passage from *Bell ExpressVu Limited Partnership v. Rex*:

The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell", "words, like people, take their colour from their surroundings".^[86] This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*^[87] as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter".⁸⁸

⁸² [1921] 2 A.C. 384 (P.C.), at 388.

⁸³ [1952] S.C.J. No. 14, [1952] 2 S.C.R. 76, at 97 (S.C.C.).

⁸⁴ [1996] S.C.J. No. 112, [1996] 3 S.C.R. 919, at paras. 207-08 (S.C.C.). See also *MacKeigan (J.A.) v. Nova Scotia (Royal Commission Marshall Inquiry)*, [1989] S.C.J. No. 99, 61 D.L.R. (4th) 688, at 716 (S.C.C.).

⁸⁵ The majority did not agree with L'Heureux-Dubé J.'s conclusion but no one disagreed with her description of the principle of coherence and the validity of relying on it to narrow the scope of a provision to avoid incoherence or conflict.

⁸⁶ (1938), 16 Can. Bar Rev. 1, at p. 6.

⁸⁷ [2001] S.C.J. No. 55, at para. 52. (S.C.C.).

⁸⁸ [2002] S.C.J. No. 43, [2002] 2 S.C.R. 559, at para. 27 (S.C.C.). Iacobucci J. also cites the following authorities: *Stoddard v. Watson*, [1993] S.C.J. No. 83, [1993] 2 S.C.R. 1069, at 1079 (S.C.C.); *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] S.C.J. No. 41, [1997] 1 S.C.R.

The presumption of coherence is strong and virtually impossible to rebut. It is unthinkable that a legislature would impose contradictory rules on its subjects. When inconsistency occurs, either the drafter has made a mistake which the court must correct, or the law must be interpreted in a way that eliminates the discrepancy. Contradiction or inconsistency cannot be tolerated; some method of reconciliation must be found.⁸⁹

PART 2. TEXTUAL ANALYSIS AND THE MAXIMS OF INTERPRETATION

In textual analysis the interpreter draws inferences about the intended meaning of a disputed word or phrase based on the grammatical, conventional and logical relations between the disputed words and the rest of the legislative text. This text may consist of the rest of the provision, a division or part, the Act as a whole or the statute book as a whole. The inferences drawn point to the intended sense or scope of the disputed words.

INTRODUCTION

Basic technique. When an interpreter analyzes a text, he or she draws inferences about what the author must have intended given the words used and the circumstances in which they were used. This process of drawing inferences is varied, ranging from what is obvious and incontestable (and therefore not worth mentioning) to connections and implications that are subtle or based on contestable assumptions. Drawing inferences usually takes place automatically, without conscious thought;⁹⁰ in formal interpretation, however, it should be deliberate and explicit. Ideally, interpreters should offer an explanation of how they moved from the words of the text and their context to a conclusion about what the text means.

An example of explicit textual analysis is found in the judgment of the Ontario Court of Appeal in *R. v. Volante*.⁹¹ The issue was whether a person who owned gambling machines to which the public had access was guilty of "keeping" the machines for gambling, contrary to s. 202(1)(b) of the *Criminal Code*. It provided:

202.(1) Every one commits an offence who

...

1015, at para. 61 (S.C.C.). See also *65302 British Columbia Ltd. v. Canada*, [1999] S.C.J. No. 69, [1999] 3 S.C.R. 804, at paras. 5-8 (S.C.C.), per Bastarache J. dissenting.

⁸⁹ The methods for resolving conflict within a body of law are reviewed in Chapter 10.

⁹⁰ For a description of the sort of analyses that every interpreter engages in without conscious thought, see *supra*, Chapter 2, at pp. 26-29.

⁹¹ [1993] O.J. No. 1770, 14 O.R. (3d) 682 (Ont. C.A.).

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