

Saskatchewan Administrative Tribunals Presentation

Statutory Interpretation

November 13, 2024



CPSS

College of Physicians and
Surgeons of Saskatchewan

Land Acknowledgement

I respectfully acknowledges that the land on which I live and work is **Treaty 6 Territory, the traditional territory & home of the Cree, Dakota, Sauteaux and Métis Nations.**

I would like to affirm our relationship with one another now and for the future, and my role in assisting the people of Saskatchewan to achieve reconciliation

Summary of the Presentation

- Standards of review of tribunal decisions
- Principles of statutory interpretation

“When I use a word, it means just what I choose it to mean — neither more nor less”

Humpty Dumpty: Through the Looking Glass



Introduction

- An opportunity for lawyers to be creative
- An obligation on tribunals to consider the broad implications of possible interpretations

Disclaimer

- Any opinions expressed in this presentation are mine and don't reflect a position of the College of Physicians and Surgeons
- Nothing in this presentation should be viewed as legal advice. You should consult your own lawyer for specific advice on legal issues

Standards of review – *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

Judicial Review

The standard is *prima facie* reasonableness. Correctness may apply if:

- The tribunal is considering a constitutional question
- The tribunal is addressing a general question of question of law of central importance to the legal system as a whole
- The tribunal is addressing questions regarding the jurisdictional boundaries between two or more administrative bodies

Standards of review – Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65

Appeal:

Unless there is a contrary intention in the statute, the standard of review is correctness on questions of law and palpable and overriding error on questions of fact or mixed fact and law

Review for reasonableness— *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65

A reasonable decision is one:

1. In which there is internally coherent reasoning and a rational chain of analysis in reaching a decision; and
2. The decision is justified in light of the legal and factual constraints that bear on the decision

Review for reasonableness – Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65

Conversely, a decision will be unreasonable if:

- 1) There has been a failure of rationality within the reasoning process. The court must be able to follow the tribunal's decision-making reasoning without encountering any fatal flaws in its overall logic; or,
- 2) It is untenable in light of the applicable factual and legal constraints.

Review for reasonableness – Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65

The court “*must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified*”

When a tribunal interprets a question of law (including a statute), if the decision is to be reasonable the tribunal must follow principles of statutory interpretation

- *Sran v University of Saskatchewan Academic Misconduct Appeal Board*, 2024 SKCA 31
- *College of Physicians and Surgeons of British Columbia v British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 354
- *JK v Gowrishankar*, 2019 ABCA 316

What are those principles to interpret a statute?

La Presse inc. v. Quebec, 2023 SCC 22

[22] It is well established that, under the modern approach to statutory interpretation, “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”

Confusion as to what this might entail in practice endures, despite the apparent simplicity of Driedger’s influential words. For the sake of clarity, I will restate two principles that seem to be at the heart of this confusion.

What are those principles to interpret a statute?

La Presse inc. v. Quebec, 2023 SCC 22

[23] First, the plain meaning of the text is not in itself determinative and must be tested against the other indicators of legislative meaning — context, purpose, and relevant legal norms. The apparent clarity of the words taken separately does not suffice because they “may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation”.

What are those principles to interpret a statute?

La Presse inc. v. Quebec, 2023 SCC 22

[24] Second, a provision is only “ambiguous” in the sense contemplated in Bell ExpressVu Limited Partnership v. Rex, if its words can reasonably be interpreted in more than one way after due consideration of the context in which they appear and of the purpose of the provision. This is to say that there is a “real” ambiguity — one that calls for the use of external interpretive aids like the principle of strict construction of penal laws or the presumption of conformity with the Canadian Charter of Rights and Freedoms — only if differing readings of the same provision cannot be decisively resolved through the contextual and purposive approach set out by Driedger

Sullivan: Construction of Statutes 7th Ed. 2022

Under the modern principle, an interpreter who wants to determine whether a provision applies to particular facts must address the following questions:

- What is the meaning of the legislative text?
- What did the legislature intend? That is, when the text was enacted, what law did the legislature intend to adopt? What purposes did he hope to achieve? What specific intentions if any did it have regarding facts such as these?
- What are the consequences of adopting a proposed interpretation? Are they consistent with the norms that the legislature is presumed to respect?

Sullivan: Construction of Statutes 7th Ed. 2022

Under the modern principle, a court's primary duty is to harmonize the ordinary meaning of the text with the other indicators of legislative intent gleaned from reading the text in its entire context.

Sullivan: Construction of Statutes 7th Ed. 2022

A purposive analysis of legislative text is based on the following propositions:

- (1) All legislation is presumed to have a purpose. It is possible for courts to discover or adequately reconstruct this purpose through interpretation.
- (2) Legislative purpose must be taken into account in every case and at every stage of interpretation, including initial determination of a text's meaning.
- (3) Insofar as the language of the text permits, interpretations that are consistent with or promote legislative purpose should be adopted, while interpretations that defeat or undermine legislative purpose should be avoided.

Sullivan: Construction of Statutes 7th Ed. 2022

When a court is called on to interpret legislation, it is not engaged in an academic exercise. Interpretation involves the application of legislation to facts in a way that affects the well-being of individuals, entities and communities for better or worse. Not surprisingly, the courts are interested in knowing what the consequences will be and judging whether they are acceptable.

Sullivan: Construction of Statutes 7th Ed. 2022

It is presumed that the provisions of legislation are meant to work together, both logically and teleologically, as part 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 toward accomplishing the intended goal.

Sullivan: Construction of Statutes 7th Ed. 2022

The meaning of legislation must be gathered from reading the words in context, and this includes the external context. The external context of a provision is the setting in which the provision was enacted, its historical background, and the setting in which it operates from time to time.

Mistakes that a tribunal may make when interpreting a statute

Relying solely on the dictionary definition of a word or phrase

Sullivan: [i]n fact the definitions found in dictionaries say very little about the meaning of a word as used in a particular context.

Mistakes that a tribunal may make when interpreting a statute

Failing to consider whether a word or phrase may have a technical meaning that is inconsistent with the ordinary meaning of the word

Mistakes that a tribunal may make when interpreting a statute

Failing to consider whether a particular interpretation would be consistent with the goals of the statute

e.g. *Pharmascience v. Binet*, 2006 SCC 48

Mistakes that a tribunal may make when interpreting a statute

Failing to consider whether a particular interpretation introduces inconsistency or disagreement between two provisions in the statute

Mistakes that a tribunal may make when interpreting a statute

Failing to consider whether a particular interpretation introduces inconsistency or disagreement between the provision in the statute and provisions of other statutes

Mistakes that a tribunal may make when interpreting a statute

Failing to consider the external context.

Sullivan states:

The external context consists of the setting in which the legislation was enacted the social economic and political realities that inform the legislation in the circumstances specifically addressed by the legislation. ... The key assumption here is that legislation is not an academic exercise. It is a response to circumstances in the real world and it necessarily operates within an evolving set of institutions, material circumstances and cultural assumptions.

Mistakes that a tribunal may make when interpreting a statute

Failing to consider the legislative history of the provision

R. v. Wolfe, 2024 SCC 34

The court overturned the Saskatchewan Court of Appeal's interpretation of a provision in the *Criminal Code* which allowed the court to impose a driving prohibition if the accused was convicted of certain driving offences

Knezevic v British Columbia (Assessor of Area #01 - Capital), 2024 BCSC 561

Land was assessed at a higher valuation because there was a cabin on the property. The landowner argued that the entire property, including the land on which the cabin was situated, was “managed forest land” and subject to a lower rate of taxation. The Board disagreed.

Knezevic v British Columbia (Assessor of Area #01 - Capital), 2024 BCSC 561

The court concluded that the Board had erred when it did not consider the provisions in their context.

[64] I agree with the arguments advanced by Mr. Knezevic. Assuming that a plain meaning can be discerned, the plain meaning of the words is not determinative: La Presse at para. 23. Rather, the jurisprudence is clear that under the modern approach to statutory interpretation, the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the applicable statute: McColman at para. 35. Therefore, in determining the meaning of the text, a court cannot interpret a statutory provision in isolation, but must do so in light of the broader statutory scheme.

Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar), 2024 ONSC 93

The adjudicator concluded that a statute should be interpreted to mean that an applicant was entitled to a licence unless the Registrar proved that the applicant was not fit. The Registrar argued that the onus lay on the applicant to prove suitability for a licence, not on the Registrar to provide that the person was not suitable.

Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar), 2024 ONSC 93

The court ruled that the adjudicator made several errors in interpreting the statute:

[39] ... [D]iscerning the ordinary meaning of the words in a text is only the beginning of the interpretive exercise. Meaningful statutory interpretation requires an examination of not only the language of a provision, but its context and the purpose of the legislation or overall statutory scheme

Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar), 2024 ONSC 93

The court ruled that the adjudicator made several errors in interpreting the statute:

[40] The Supreme Court has repeatedly warned that failing to test an initial impression of meaning based on isolated language in statutory text may lead an adjudicator to overlook latent ambiguity,

My suggested methodology

Ideally the tribunal will have legal counsel presenting competing arguments before the tribunal to assist the tribunal to identify the competing interests and what it should consider.

My suggested methodology

Ideally, the tribunal's reasons will acknowledge the factors in support of a particular interpretation, set out the factors that are contrary to that interpretation and then explain why it chose one interpretation rather than the other.



QUESTIONS OR COMMENTS?