Sullivan and Driedger on the Construction of Statutes

Fourth Edition

by

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Butterworths
A Member of the LexisNexis Group
ment to bear. Courts are frequently criticised for their failure to do that. The courts should not deny themselves the light which Parliamentary materials may shed on the meaning of the words Parliament has used and thereby risk subjecting the individual to a law which Parliament never intended to enact.105

Pepper, (Inspector of Taxes) v. Hart is a relatively rare case in which the very point to be decided was actually anticipated, debated and resolved by Parliament. It is therefore possible to say that the legislation in question was passed on the understanding that it would bear a particular meaning and be applied in a particular way.106

A similar situation arose in Doré v. Verdun (City), which concerned the relationship between s. 575 of the Cities and Towns Act providing for the dismissal of actions against municipalities unless prior notice was given and a general rule governing prescription in article 2930 of the Civil Code. The issue was whether the general rule, which was enacted later, derogated from the earlier specific rule. Two documents tabled by the Minister in connection with the new Civil Code expressly addressed this issue, stating that actions against municipalities could no longer be dismissed for lack of prior notice. The same point was made by various members of the legislature during debate. In relying on this material, Gonthier J. pointed out:

Parliamentary history “must be read with caution, because [it is] not always a reliable source for the legislature’s intention”.107 In the case at bar, the parliamentary history makes a number of references to the scope of art. 2930 C.C.Q. and even expresses a unanimous intention on the part of the legislators.108

In such cases it is hard to see how a court which purports to pay deference to the will of the legislature can refuse to look at this material. It is also hard to see why it should not be used to determine the intended meaning of the legislative text.

THE CURRENT POSITION

Categories abolished. As the review above indicates, judicial use of legislative history in the past turned on a series of distinctions involving the type of material at issue (for example, commission reports rather than debate in Hansard), the nature of the problem (for example, division of powers rather than ordinary interpretation) and the way the material was used (for example, as indirect evidence of purpose rather than direct evidence of intended meaning). The recent case law of the Supreme Court of Canada ignores and arguably abolishes the

105 Ibid., at 1059.
106 For another example, see Canada (A.G.) v. Young, [1989] 3 F.C. 647, at 657-62.
first two distinctions and possibly the third as well.\textsuperscript{109} The Court is prepared to rely on legislative history for a wide range of purposes.\textsuperscript{110} It also largely ignores traditional distinctions between the handling of legislative history in civil law as opposed to common law\textsuperscript{111} and in international law as opposed to domestic law.\textsuperscript{112} This reflects a general tendency in the modern evolution of statutory interpretation to move from a rule-based to a principle-based approach.

Perhaps the clearest statement of the Supreme Court of Canada's position on the use of legislative history in ordinary interpretation cases appears in \textit{Re Rizzo Shoes Ltd. and Rizzo}\textsuperscript{113} To support its understanding of the meaning of an amendment to Ontario's \textit{Employment Standards Act}, the Court in \textit{Rizzo} quoted statements made by the Minister who introduced the amendment to the legislature. Iacobucci J. wrote:

\begin{quote}
Although the frailties of \textit{Hansard} evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation. Writing for the Court in \textit{R. v. Morgentaler}, ... Sopinka J. stated:

\begin{quote}
...until recently the courts have balked at admitting evidence of legislative debates and speeches.... The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of \textit{Hansard} evidence, it should be admitted as relevant to both the background and the purpose of legislation.\textsuperscript{114}
\end{quote}
\end{quote}

Iacobucci J. here applies the rule governing the use of legislative history in a division of powers case to a case of ordinary statutory interpretation. Arguably, he relies on this material not because it is relevant to the background or purpose of the legislation but because it offers direct evidence of legislative intent.\textsuperscript{115} However, he does not explicitly claim to do so.

In other recent cases, legislative history is explicitly invoked for the background it supplies or as evidence of purpose. The following passage from \textit{Reference re Firearms}, an unsigned judgment of the Court, is typical:

\begin{quote}
But see, for example, \textit{Dagg v. Canada (Minister of Finance)}, [1997] 2 S.C.R. 403, at para. 49, \textit{per} Cory J.: "This interpretation is buttressed by the legislative history of the Acts. As this Court has recently confirmed, evidence of a statute's history, including excerpts from \textit{Hansard}, is admissible as relevant to the \textit{background and purpose} of the legislation, provided, of course, that the court remains mindful of its limited reliability and weight." No mention is made of meaning.

See, for example, \textit{Perron-Malenfant v. Malenfant (Trustee of)}, [1999] 3 S.C.R. 375, at para. 35-36, where the Supreme Court of Canada relied on legislative history to establish that the legislature intended new legislation to codify the law of insurance.


\textit{Ibid.}, at para. 35.

\textit{Ibid.}, at para. 34.
\end{quote}
A law's purpose is often stated in the legislation, but it may also be ascertained by reference to extrinsic material such as Hansard and government publications. While such extrinsic material was at one time inadmissible to facilitate the determination of Parliament's purpose, it is now well accepted that legislative history, Parliamentary debates, and similar material may be quite properly considered as long as it is relevant and reliable and is not assigned undue weight.  

Although the Firearms Reference concerned a constitutional challenge, the authorities relied on in support of this passage include cases concerned with interpretation in ordinary cases as well.

The courts are willing to look at a wide range of materials — not just formal statements by the responsible Minister but interventions by other members of Parliament and both formal and informal documents issuing from government. In the Delisle case, for example, Cory and Iacobucci JJ. relied on executive orders designed to implement the government's anti-union policy as evidence of the purpose of the impugned legislation.

**Regulations.** The principles developed in the context of legislative enactments apply equally to the legislative history of regulations. In RJR-MacDonald Inc. v. Canada (Attorney General), the Supreme Court of Canada relied on the regulatory impact analysis statement prepared as part of the regulation-making process at the federal level to confirm the purpose of impugned regulations. In Friesen v. Canada, the Court relied on a release by the Department of Finance as well as the regulatory impact analysis statement to confirm both the purpose and intended application of an amendment to the Income Tax Act Regulations. In R. v. Huovinen, the British Columbia Court of Appeal relied on a regulatory impact analysis statement as evidence of the meaning of legislative language. Huddart J.A. wrote:

> Also helpful is the Regulatory Impact Analysis Statement.... That document published as part of the consultation process by which regulations are made suggests the Governor in Council intended that the terms and conditions of commu-

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nal aboriginal licences in the Pacific region could include “the authorization for the sale of fish harvested under the licence” ....\(^{(120)}\)

**SUMMARY**

1. A wide range of legislative history materials is admissible to assist in the interpretation of legislation, provided it meets a threshold test of relevance and reliability. The courts no longer automatically exclude certain types of material.
2. The material is admissible in both constitutional and non-constitutional cases.
3. The material may be used as evidence of external context or as direct evidence of legislative purpose. Whether there are limits on the other uses to which the material may be put remains somewhat unclear.
4. The weight to be given the material is established on a case-by-case basis.

**PROFESSIONAL AND ACADEMIC PUBLICATIONS**

*Introduction.* When it comes to technical matters outside the scope of judicial expertise, the courts require the assistance of expert testimony. With respect to matters of law or general information, however, the courts may inform themselves by consulting academic and professional publications.\(^{(121)}\) In interpretation cases the courts consult a wide variety of academic and professional publications including textbooks, monographs, studies, reports and scholarly articles.

Academic materials sometimes form part of the legislative history of an enactment and may be admissible as evidence of the understanding on which the enactment was passed. More often, however, these materials are admitted as evidence of external context or as persuasive opinion on the interpretive issues facing the court. Reliance on academic opinion is common in Charter cases and has become increasingly prevalent in ordinary statutory interpretation.

*Reliance on academic material as evidence of external context.* Courts often rely on academic and professional publications to help establish the background of legislation, that is, the historical, social, political, economic or institutional context in which the legislation was enacted and operates. In *Janzen v. Platy Enterprises Ltd.*,\(^{(122)}\) for example, the issue was whether a particular form of sexual harassment was discrimination within the meaning of Manitoba’s *Human Rights Act*. In deciding that it was, the Supreme Court of Canada relied on definitions and analyses of sexual harassment found in government reports, scholarly monographs and law review articles. These materials were relied on to


\(^{(121)}\) For discussion of matters that may be judicially noticed, see *supra*, Chapter 18, at pp. 464-66.

Official Report of
DEBATES OF THE LEGISLATIVE ASSEMBLY
(Hansard)

THURSDAY, MAY 29, 2003
Morning Sitting
Volume 16, Number 6

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THURSDAY, MAY 29, 2003

The House met at 10:04 a.m.

Prayers.

Orders of the Day

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 50.

Committee of the Whole House
SCHOOL AMENDMENT ACT, 2003
Legislature and its operation, its history, the fantastic building that we operate in and how democracy ought to be done in this Legislature, and of course to visit the capital as well.

Their teacher is Ms. Oye. Would the House please make them all very welcome.

Hon. G. Collins: I call Committee of the Whole for consideration of Bill 58.

Committee of the Whole House

INSURANCE CORPORATION
AMENDMENT ACT, 2003

The House in Committee of the Whole (Section B) on Bill 58; J. Weisbeck in the chair.

The committee met at 11:05 a.m.

Hon. G. Collins: The House, perhaps, can recess for five minutes while we wait, yet again, for the opposition to collect their papers.

The Chair: The House stands recessed for five minutes.

The committee recessed from 11:05 a.m. to 11:09 a.m.

[J. Weisbeck in the chair.]

Sections 1 to 8 inclusive approved.

On section 9.

Hon. G. Collins: I move the amendment to section 9 standing in my name on the order paper.

[SECTION 9,
(a) in the proposed section 50 (4) by deleting "section 45 (5)," and substituting "section 45 (6)," and
(b) in the proposed section 52 (3) by adding "automobile" before "insurance market".]

Amendment approved.

On section 9 as amended.

D. Jarvis: I wanted to ask the minister if he could give us somewhat of an explanation on that phrase, "appreciably impeding or reducing...competition." It's not that clear to me, and I was wondering if he would care to maybe make it a little clearer to most people.

Hon. G. Collins: Perhaps before I do that, I can just introduce the staff that are here with me today: Leon de Wet, who is from the Ministry of Finance, and Dan Perrin as well. Both these gentlemen have done a huge amount of work on what ultimately ends up being a relatively small bill, but it required a huge amount of policy development and some pretty clear thinking to make sure we got this right.
I just wanted to thank them both for their work and the time they put into it. It was a pretty complex task. It took a lot of hard thinking, and I think they've done a very good job of putting together a model that's going to serve British Columbians very well in the years ahead. I just wanted to extend my thanks to them for doing that work and to put that on the record.

The question from the member relates to section 9, which is a new section 43 of the act, which is really the one that says that the BCUC is going to be the regulator. The wording that the member raised or has some question around is the phrase "appreciably impeding or reducing...competition." Essentially, that is a bit of a qualitative measure, and I think the goal here is that we're trying to create a fairly light-handed regulatory model for this industry. We don't want to be in there heavy-handed or have the BCUC in there in a heavy-handed way running the insurance industry in this province on a to-day basis.

Our preference is that we go through a bit of a transition period as ICBC modifies its behaviour, as the insurance companies modify their behaviour, and then we end up with a fairly level playing field. The BCUC will then be able to stand back and let the market work and only step in when it's clear that there is an appreciable reduction in competition. If a problem arises that's a visible problem, which you can appreciably measure and say, "There's a problem here in the mar-

ket," the BCUC would then be able to step in and deal with it. The goal is to try and create a fairly light-handed regulatory model where the intercession is required only when there's a visible problem.

D. Jarvis: Just to go a little further on that, is this regulator at one point going to be asked to go out and do a complete audit on ICBC or bring in actuaries to establish what the rates are going to be?

Hon. G. Collins: How this will probably work is that ICBC will apply for a rate increase at some point. The B.C. Utilities Commission will obviously look at that request, and they obviously will.... I mean, it's very likely they wouldn't be able to do all the required evaluations internally to determine whether or not that rate request was in the best interests of the consumers.

It's likely that the Utilities Commission would need to go outside of the commission and access whatever expertise, advice, studies, analysis that they required in order to make a proper assessment of whether or not that rate increase was justified and whether or not the service that was being provided was commensurate with the cost that was being charged. ICBC would make a request. The Utilities Commission would determine what work they needed to do, and to what extent they needed to get advice, before making a determination.

D. Jarvis: So in actual fact, it will be up to the regulator at that point to decide whether he needs an actuary on that, so that's fine. Well, I'll sit down. Go to the next section.
D. Jarvis: If you wouldn't mind, I'd like to backtrack a bit there.

Now, you're going to give this power to BCUC. The regulator is going to have that power. I'm wondering if it's not a duplication of power in the sense that.... Why would we not still be dealing with or going to FICOM or something along that line?

[G. Trumper in the chair.]

Hon. G. Collins: The Utilities Commission's primary role really is twofold. First of all, it would be to regulate service and rates for basic insurance, a regulating monopoly. For all these years ICBC has been a monopoly with no regulator to determine what the best interests of the public are. The rates, etc., had all been set at the cabinet table. Now they're going to have to actually report to somebody. The Utilities Commission will oversee that and make sure that on the basic, they're providing good service at a reasonable price.

The Utilities Commission will also have a role to play, as far as ICBC's presence goes, in the optional insurance market. There are other players in the optional insurance market who will not be subject to the Utilities Commission regulation. ICBC will, and the reason for that is that ICBC has about 95 percent of the market on the optional side as well. That's really been the problem, people would say — that there's not sufficient competition on the optional side. ICBC, having that much of a market share, has in essence a virtual monopoly. It does need to be subject to some additional regulation, at least for an interim period until this sorts itself out and we have clearly established a level playing field and a more open, competitive market on the optional side.

The Utilities Commission will also regulate the optional portion of ICBC's business. Again, that will be in a fairly light hand, we hope, depending on the behaviour of ICBC. There still is an ongoing insurance industry — the private sector people, for example — who are regulated by FICOM, Financial Institutions Commission, which rests within the Ministry of Finance. That will continue. There are a couple of roles here for various players. So FICOM continues to regulate the players in the optional insurance automobile market. There does continue to be a role there for FICOM.

At some point, we hope that as this market sort of shakes out and becomes more competitive and there's more of a level playing field, there will be an opportunity under the act for ICBC to go to the Utilities Commission and say: "We believe that there is a competitive marketplace in place for the optional side." They can say to the Utilities Commission under the act: "We believe that exists now. We don't believe we should be subject to any more regulatory burden than the private sector insurance in the optional market." The Utilities Commission then can do a study, make an evaluation and say: "Yeah, they're right. We now think there is a pretty open, competitive market on the optional side. ICBC doesn't have any undue powers." The Utilities Commission can then make a recommendation to cabinet to turn that regulatory switch off for the regulation of the optional portion of ICBC's business. Then ICBC would be just like every other player, subject to no more or no less regulation.

If government were to do that and make that choice, if at a later date it was determined that in fact the market was either going back to the way it was or ICBC was taking advantage of that for various reasons to actually dominate the market again, then government could switch that back on. We're trying to set up a structure that will operate on its own eventually. That's why that trigger is there. Perhaps that describes the two roles the member was asking about.
D. Jarvis: Heretofore, ICBC's rating system and the information they use for their rating have been kept to

themselves, where in the rest of the competitive world it's been open and shared so that they can get the information from other insurers. Will this now be open to the so-called competition out there — the information on ICBC's rating system?

Hon. G. Collins: It's a very good question, because that is one of the issues that's been raised by private insurers — that they're required to share amongst themselves their information as part of creating the market, and ICBC doesn't do that. There are reg-making powers in the act that would allow government to direct ICBC to comply with the practice that's currently there — or whatever the practice would be for the disclosure of that information in the optional side.

ICBC doesn't currently keep information in exactly the same way as the private insurers do. They have to transition their systems, etc., to get to that stage. There will be a bit of a transitional period. Rest assured, we will encourage them — probably fairly vigorously — to comply with that and to make the transitions that are required as quickly as possible.

D. Jarvis: Thank you for the information. That's basically what I was looking for.

One other final question I wanted to know. I assume that he or she who will be appointed regulator has not been appointed yet. Can you give me an idea of what type of individual you're looking for? Will they have had experience in the private system or maybe even just with ICBC? Just where do we stand on that point?

Hon. G. Collins: How the regulation is actually going to work is going to be the nub of it. The regulator — having the right person there is important. We've also identified through this process the issue of which minister should be responsible for what. For example, right now I'm sort of in this strange position of being the minister responsible for ICBC at the same time as I am the minister responsible for the legislation that regulates ICBC. I think that sends a negative message to the marketplace.

We've tried to be very open and involving with all the different players as we've developed this legislation and have treated ICBC no differently in those consultations than we've treated various private sector insurers in trying to determine what this model needs to be. Clearly, there's an issue identified there: that having a minister responsible for advocating for the corporation as well as for regulating that corporation is a problem. Government is about to address that to make sure that's clarified.

Within the Utilities Commission itself, the member will be aware there are changes coming. They are going to be involved with B.C. Hydro again in a bigger way than they were during the period under the previous government as well as taking on the private sector insurance regulatory process for ICBC — or the competitive side.

We do need to have some different people, or some additional people perhaps — expertise at the Utilities Commission. We are looking right now for somebody or several somebodies, depending on what we believe is required or what the Utilities Commission believes is required, to come in and play that role.

It's fair to say that to a certain extent, monopolies are monopolies are monopolies. They tend to
2003 Legislative Session: 4th Session, 37th Parliament

HANSARD

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Official Report of

DEBATES OF THE LEGISLATIVE ASSEMBLY

(Hansard)

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The House met at 2:03 p.m.
Hon. G. Collins: I call second reading on Bill 58.

INSURANCE CORPORATION
AMENDMENT ACT, 2003

Hon. G. Collins: I move that the bill now be read a second time.

Bill 58 amends the legislation creating and governing the Insurance Corporation of British Columbia to bring the corporation under the regulatory jurisdiction of the British Columbia Utilities Commission. The changes that we're introducing are intended to accomplish two main goals: one, to enable the British Columbia Utilities Commission to set ICBC's basic automobile insurance premiums and to supervise ICBC's service levels; two, to enhance competition in the optional insurance market.

As background, it's important to know that ICBC is in three different lines of businesses. First, it provides basic mandatory insurance coverage to every vehicle and driver licensed in British Columbia. Second, it provides most of the optional automobile insurance in British Columbia in competition with private insurers. Third, it provides other functions related to vehicles and drivers such as administration of the licensing regime.

Basic automobile insurance includes $200,000 third-party liability coverage, $1 million uninsured motorist protection, hit-and-run protection and personal injury accident coverage. Every vehicle and every driver licensed in British Columbia must carry basic coverage, and only the Insurance Cooperation of British Columbia provides it.

Optional insurance, however, includes additional liability and uninsured motorist coverage beyond the minimum provided as part of that which is included in basic insurance, as well as collision and comprehensive coverage for the vehicle. It's up to the consumer how much, if any, of these optional coverages to purchase and what insurer they wish to purchase them from.

As well, this bill replaces the authority of cabinet through the Lieutenant-Governor-in-Council to set ICBC's premiums. Instead, the bill provides authority for the BCUC to regulate ICBC's basic insurance business as a monopoly. The Utilities Commission has a long history of regulating public utilities which are monopolies in other fields such as natural gas and electricity. This change will make use of the expertise the commission has in monopoly regulation to ensure that the Insurance Corporation's basic insurance business is as efficient and its performance as high quality as possible. ICBC premiums will be set in an open and transparent manner, ensuring that ICBC remains financially sound and continues its recent progress in becoming more efficient.

The Utilities Commission will also have jurisdiction over the level of service provided by ICBC. That's a common feature of monopoly regulation to ensure that the monopoly does not react to pressure placed on its revenues by reducing the level or quality of the service which they provide. The commission will be able to regulate ICBC's practices and procedures but not to intervene in individual claim disputes or change the terms and conditions of the insurance coverage.

Competition in the optional automobile insurance market has been limited in the past because of several natural advantages that the Insurance Corporation of British Columbia has in that market, which are both financial and operational in nature. As a result, while private insurers are able to provide optional insurance in B.C., they currently have a very small percentage of the market. Consumers suffer from the lack of choice in the market and because the benefits of competition, in terms of downward pressure on premiums and upward pressure on quality services, are not fully realized.
This bill addresses this issue by making several changes that will equalize the opportunities afforded to private insurers and ICBC. ICBC has financial advantages, as a result of its tax-exempt status and lack of a requirement to earn a revenue return for its investors, which will be eliminated under the bill. The corporation will not be required to pay tax, but it will be required to earn a profit from its optional insurance business equal to that earned before tax by private insurers, placing them in an equal and competitive position.

Another financial advantage arises because minimum capital requirements are currently imposed on private insurers by the financial institutions regulators but not on ICBC. ICBC's optional insurance business will be required to meet the same capital adequacy test as their competitors after a reasonable phase-in period. So long as ICBC meets the profit and capital targets for its optional insurance business, the Utilities Commission will not regulate optional premiums.

There are other items that I will be raising in committee stage of the bill to focus attention to those issues. I move second reading of the bill.

Mr. Speaker: Hon. members, pursuant to the motion passed in this House yesterday, the time for debate on this bill has elapsed, so I will call the question. The question is second reading of Bill 58, Insurance Corporation Amendment Act, 2003.

Motion approved.

Hon. G. Collins: I move that the bill be referred to a Committee of the Whole House for consideration at the next sitting of the House after today.

Bill 58, Insurance Corporation Amendment Act, 2003, read a second time and referred to a Committee of the Whole House for consideration at the next sitting of the House after today.
In my opinion, when the various provisions of s. 113 of the Act are read as a whole, the question just posed must be answered in the negative. Were it otherwise, then surely the legislature would have worded s. 113(7) differently. The opening words of that provision are critical. They read:

"Where the claim of the applicant is not disputed . . ..

... Had it been the intent of the legislature to so empower the registrar, I would have expected the opening words of s. 113(7) to read along the following lines: "Where the claim of the applicant is not disputed, or if disputed, the registrar is of the opinion that no real dispute exists . . .". 21

Along similar lines, in ruling that the registrar lacked power to award costs, Moldaver J. wrote:

... if it was the intention of the legislature under s. 106(5) to confer jurisdiction upon a registrar to award costs and disbursements, then it certainly took a roundabout route to achieve this. I am not prepared to accept any such interpretation. 22

In Law Society of British Columbia v. Mangat, 23 the Supreme Court of Canada held that the reference to "other counsel" in s. 69(1) of the Immigration Act effectively authorized non-lawyers to represent clients, for a fee, in proceedings before the Immigration and Refugee Board. Section 69(1) provided:

In any proceedings before the Refugee Division, the person who is the subject of the proceedings may, at that person's own expense, be represented by a barrister or solicitor or other counsel.

Gonthier J. wrote:

If Parliament had intended to limit the meaning of "other counsel" to unpaid non-lawyers, the section would have been drafted differently so as to make it clear that the phrase "at that person's own expense" only referred to barristers and solicitors and not to other counsel. 24

Had Parliament wanted to declare that "other counsel" means only unpaid persons, it would have said so by using distinctive terms. 25

Presumption of orderly and economical arrangement. It is presumed that in preparing the material that is to be enacted into law the legislature seeks an orderly and economical arrangement. Each provision expresses a complete idea. Related concepts and provisions are grouped together in a meaningful way. The sequencing of words, phrases, clauses and larger units reflects a rational plan.

Reliance on this presumption is illustrated in the dissenting judgment of La Forest J. in R. v. Finta. 26 One of the issues facing the Court in Finta was whether

21 Ibid., at 355.
22 Ibid., at 352.
24 Ibid., at para. 64.
25 Ibid., at para. 65.
s. 7(3.71) of the Criminal Code created an offence or merely extended the territorial jurisdiction of Canadian courts. The section provided that

Notwithstanding anything in this Act or any other Act, every person who ... commits an act or omission outside Canada that constitutes a war crime or a crime against humanity and that, if committed in Canada would constitute an offence ..., shall be deemed to commit that act or omission in Canada....

La Forest J. concluded that the section did not create an offence, but merely overcame the effect of s. 6(2) limiting the jurisdiction of Canadian courts to acts or omissions in Canada. He wrote:

Parliament’s intention to confine itself to a rule governing the application of offences is also evident from the position of s. 7(3.71) in the Code. It appears, I repeat, in Part I of the Code, which is appropriately titled “General”. No offence is created in that Part. It deals, as its name implies, with interpretive matters, application, enforcement, defences and other general provisions. Offences are dealt with in other parts of the Code, and are usually entitled as such, among others “Part II. Offences Against Public Order”, “Part VIII. Offences Against the Person and Reputation”, “Part IX. Offences Against Rights of Property”, and so on. One should assume some minimal level of ordering in an Act of Parliament. Had Parliament wished specifically to make war crimes and crimes against humanity 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.27

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.28 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:

[Al]though 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.29

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

27 Ibid., para. 35.
vant question is not whether the judge can add words or not, but rather if the words that he adds do anything more than express what is already implied by the statute.  

It must also be assumed that each term, each sentence and each paragraph have been deliberately drafted with a specific result in mind. Parliament chooses its words carefully: it does not speak gratuitously.

This principle, sometimes referred to as the rule of effectivity or "le principe de l'effet utile", is codified at section 41.1 of Quebec's Interpretation Act. In Subilomar Properties (Dundas) Ltd. v. Cloverdale Shopping Centre Ltd. Spence J. described the principle in the following way:

It is of course trite law that no legislation whether it be by statute or by-law should be interpreted to leave parts thereof mere surplusage or meaningless . . .

Although a common interpretative argument, the rule is not absolute: one should not ask it to provide more than it is capable of. It merely states a presumption.

116. A comparison can be made between Justice Pigeon's dissent in R. v. Sommersville, [1974] S.C.R. 387, in which he says a judge must not add restrictions to an enactment which is clear, and the views of the majority, which felt the purpose of the law in question justified restricting its application by reading the enactment as if it contained the words "in contemplation of or following upon a purchase or sale . . ."


Even if the contrary is presumed, a statute may certainly be redundant. Sometimes the drafter has good reasons for saying the same thing in more than one way, for example to dispel doubts or avoid controversy. Or it may be necessary to render certain words useless in order for others to be meaningful, or in order to avoid absurd results. In some cases, the courts have been asked to give some words a useful meaning at the expense of others. Some words may be denied any effect in order to avoid an absurd result. Finally, it should not always be assumed that a provision is enacted in order to modify pre-existing law: "A Legislature may very well be found to have enacted a declaratory provision ex abundanti cautela"; the statute reiterates an existing rule as a precaution. Thus, the rule of effectivity does not justify the conclusion that all provisions of an enactment change the law.

SUBSECTION 3

LIMITATIONS OF THE GRAMMATICAL METHOD

It cannot be too strongly stated that the literal approach is fundamental to interpretation of all written texts, including those enacted by Parliament. In trying to ascertain legislative intent, the reader must begin with the text chosen by the author as a vehicle for his thoughts. But should he stop there? According to Lord Denning,

...Beyond doubt the task of the lawyer – and of the judge – is to find out the intention of Parliament. In doing this, you must, of course, start with the words used in the statute: but not end with them – as some people seem to think.

Two reasons in particular militate in favour of going beyond the enactment. First, as we have seen, the goal of interpretation is more

120. In Kearney v. Oakes (1890), 18 S.C.R. 148, Patterson J. held (at p. 173) that in the enumeration “officer, employee or servant of the Department”, the words “employee” and “servant” were synonymous.
122. In R. v. Nabis, [1975] 2 S.C.R. 485, the majority (Beetz, J., at p. 491) intended to give a real and useful effect to an enumeration of means of communication (“by letter, telegram, telephone, cable, radio . . .”); Pigeon J.’s dissenting opinion emphasized (at p. 496) the need to give an effect to the words “or otherwise” which followed the enumeration.
125. See infra, p. 531.