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Reminders:

1. Issue

2. Analysis

- Modern Principle (state):
 - Answer according to: Text
 - State the Rule
 - Does it fit under s12 (remedial) or penal? (Liberal vs. Strict, Dynamic vs. Static)
 - Definitions in section/statutes
 - Go through “Meaning” Rules (pg 8)
 - Presumptions about Legislative Drafting (pg 10)
 - Over-inclusive? Under-inclusive? Contradictory? Overlapping? (pg 3)
 - What does rule look like after these transformations?
 - Answer according to: Text + Context
 - Look at Rest of text (not at issue) for meaning of words/to explain issue (preceding/proceeding words, provisions)
 - Look at other relevant statutes
 - Evolving context
 - Coherence (Regs, Common Law, Interpretation Acts)
 - Expert Opinion
 - What does rule look like after these transformations?
 - Answer according to: Text + Context + Purpose
 - Object of Act/Intention of Parliament
 - Extrinsic Aids (pg 8)
 - Purpose provision
 - Historical context
 - Legislative Purpose (pg 6)
 - Legislative Scheme (pg 6)
 - What does rule look like after these transformations?
- “Presumptions Against”/Absurdity arguments (pg 8)
- Considerations (pg 12)

4. Conclusion

The Modern Principle:

Today there is only one principle or approach, namely,

“the words of an Act are to be read in their **entire context**, in their **grammatical and ordinary** sense, **harmoniously** with the **scheme** of the Act, the **object** of the Act, and the **intention** of Parliament”.

- Textual meaning
- Legislative Intent
- Compliance with established legal norms

4 Elements of “Intention of Parliament”:

Expressed Intention	Intention expressed by enacted words
Implied Intention	The intention that may be legitimately implied from the enacted words
Presumed Intention	The intention that the courts will, in the absence of an indication to the contrary, impute to Parliament
Declared Intention	The intention that Parliament itself as said may or must be (or must not be) imputed to it.

Authority: Driedger, *The Construction of Statutes*

→ Three sources of interpretation law: 1. **Common law** (most important), 2. **Interpretation Acts**, 3. **Interpretation rules in individual statutes and regulations** (in Civil Codes, in Quebec).

Issues Arising in Statutory Interpretation

Issue	Argument to Address the Issue	Description
Ambiguous, vague, or incomplete text	Disputed Meaning	The interpreter claims that, if properly interpreted, the provision has a particular preferred meaning. <ul style="list-style-type: none"> ⇒ Must establish that this preferred meaning is (1) the ordinary meaning, (2) an intended technical meaning, or (3) is at least a plausible meaning. ⇒ If bilingual, interpreter must address both versions.
Evolving Context	Static v. Dynamic Interpretation.	Interpreter argues that the text should be interpreted: <ul style="list-style-type: none"> ⇒ Static: as it would have been when the text was first enacted ⇒ Dynamic: in light of current understandings of language and social conditions

Over-Inclusive Text	Non-application	<p>Interpreter identifies a reason not to apply a provision to the facts, even though it would otherwise apply (given its ordinary meaning)</p> <p>⇒ A provision may be “read down” to (1) promote legislative purposes, (2) avoid absurdity, or (3) comply with the presumptions of legislative intent.</p>
Under-inclusive Text	Incorrigible gap in legislative Scheme (Supplementation with Common Law Rule or Remedy)	<ol style="list-style-type: none"> 1. Interpreter claims that the legislation as drafted cannot apply to the facts even though, given the legislation’s purpose, it probably should apply. <ul style="list-style-type: none"> ○ Whether this omission was deliberate or not, the court has no jurisdiction to fill a gap in a legislative scheme by “reading in” or otherwise enlarge the scope of legislation. ○ Courts can intervene if the flaw can be characterized as a minor “drafting error” 2. Supplementation of a Corrigible Gap <ul style="list-style-type: none"> ○ The interpreter concedes that the legislation as drafted does not apply, but claims that the common law does apply so as to supplement the under-inclusive legislation. ○ Supplementation arguments are generally successful when the court relies on its <i>parens patriae</i> jurisdiction (the common law power to protect people, like children, who cannot care for themselves), or its inherent jurisdiction to control its own process.
Contradictory or Incoherent Text	Corrigible Mistake	<p>The interpreter claims that the provision contains a drafting mistake, which must be corrected before determining whether the provision applies to the facts.</p> <p>⇒ Interpreter must establish (1) what the legislature clearly intended and (2) what the text would have said had it been properly drafted.</p> <p>⇒ This is a common problem in bilingual interpretation when the two versions say different things.</p>

Overlapping Provisions	<p>No Conflict: Overlap v. Exhaustive Code</p> <p>Conflict: Paramountcy Rule</p>	<p>Overlap → In the absence of conflict, if two or more provisions apply to the same facts, each is to be applied as written.</p> <ul style="list-style-type: none"> ⇒ The courts work with a presumption of overlap <ul style="list-style-type: none"> ○ Any law (common law/legislation) that could apply is presumed to apply, unless there is contrary evidence. <p>Exhaustive Code → Interpreter concedes that the overlap between legislation (or between legislation and common law) does not create a conflict, <u>but claims that a particular act or provision was meant to apply exhaustively, to the exclusion of the other (statutory or common) law.</u></p> <p>Interpreter claims that there is a conflict between the two laws, and that one law takes precedence over the other <u>on the basis of some principled reason</u> (legislation > common law; specific > general)</p>
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Every Province's *Interpretation Act* includes a provision that directs interpreters to give every enactment "such fair, large, and liberal construction and interpretation that best ensures the attainment of its objects" (s.12 of the *Federal Interpretation Act*)

- Require a preference for an interpretation that **promotes the purpose** of legislation over one that uses strict construction.
- ⇒ Historically:
 - Penal: Legislation that interferes with individual rights/freedoms → attracts a strict construction.
 - Remedial: legislation that cures mischief or confers benefits → attracts a liberal construction.
 - When liberally construed, the focus is on achieving the benevolent purpose of the legislation: general principles are applied as fully as their wording permits, while exceptions and qualifications are strictly interpreted.
 - If any doubts or ambiguities arise, they are resolved in favour of the person seeking the benefit of the statute.
- ⇒ S.12 of the *Federal Interpretation Act* deems all legislation to be remedial (enacted to eliminate the distinction between penal and remedial legislation)

Common Law Presumptions Used to Determine Legislative Intent

Legislative Purpose	<p>Interpreter must try to determine the purpose of legislation, and, insofar as the text permits, adopt an interpretation that promotes (or is at least consistent with) those purposes.</p> <ul style="list-style-type: none"> ⇒ Interpretations that would defeat legislative purpose are considered absurd. ⇒ The vaguer the language of the legislation, the more discretion the interpreter has, and the greater is the importance of constructing purposes in an appropriate interpretation. <p><u>Liberal Construction:</u> Given to quasi-constitutional legislation (human rights codes), social welfare legislation, or benefit conferring legislation</p> <ul style="list-style-type: none"> ⇒ Purpose is to confer benefits and amplify remedies. ⇒ According to Interpretation Acts, these should be preferred over strict. ⇒ When legislation is overly broad, a narrow interpretation will be chosen as the one that best ensures the statute's objects. <p><u>Strict Construction:</u> Emphasis is placed on the wording of the statute: general terms are read down, conditions of application are fully enforced, and ambiguities are resolved in favour of non-application.</p> <ul style="list-style-type: none"> ⇒ Applied to criminal laws, laws that take private property, and exceptions to well-established legal principles. (protect individuals from incursions on liberty, property, security, and protect them from state punishment.)
Legislative Scheme	<p>The provisions of an act are presumed to work together as part of a coherent scheme designed to implement legislature's goals.</p> <ul style="list-style-type: none"> ⇒ Ask why the legislation was included to determine how it contributes to the scheme. (what does it add; how does it limit/qualify them/underlying rationale?) ⇒ Knowing how a provision contributes is a good indicator of how it should be interpreted. ⇒ Look at titles, headings, subheadings, sequence of marginal notes <p><u>If there are Mistakes or Gaps in the Legislative Scheme:</u></p> <ol style="list-style-type: none"> 1. Corrigible Mistakes: there is a presumption that the legislature does not make mistakes. This presumption can be rebutted by persuasive evidence that the text does not accurately reflect the rule the legislature intended to enact. <ol style="list-style-type: none"> a. Courts can correct mistakes, unless the mistake amounts to a gap in the legislative scheme. 2. Incurable Gaps: <ol style="list-style-type: none"> a. Courts generally will not cure a gap in a legislative scheme or cure under-inclusive provisions by making them apply to facts outside the ambit of text's language. b. The court will not "read in"; but they will "read down", which is not considered to be a form of judicial legislation. 3. Supplementing Legislation by Reliance on Common Law or the Civil Code <ol style="list-style-type: none"> a. The court can rely on supplemental sources of law to complement what the legislative scheme provides (even though they can't cure an under-inclusive legislative scheme).

Coherence in
Statutory
Scheme

General Compliance with Constitutional Law and Values to Maximize their Reach

1. Presumption that legislatures **intend** to enact **constitutionally valid law** (particularly with respect to any limitations on their jurisdiction set out in the Constitution Acts.)
 - a. This presumption is **not to defeat any clear legislative intentions**. The possibility that legislatures sometimes do intend to restrict a Charter right/freedom for another important goal (which they are entitled to do under s.1) cannot be taken away by interpretation.

Compliance with Related Legislation to Provide Coherence

1. Statutes that deal with the **same subject matter are to be read together** with a presumption that they offer a **coherent and consistent treatment** of the subject.
 - a. Sometimes, they create a **single, integrated scheme**; sometimes they create **distinct but overlapping schemes**.
 - b. Interpretation provisions in one are presumed to apply to all related statutes.
2. Referral to the statute book to ensure consistency: Even if statutes don't relate to the same subject, **comparing provisions in different enactments** that deal with a particular matter can be useful.
3. Drafters are presumed to be **consistent** in their use of language and techniques, so the similarities and differences among the provisions can form the basis for **inferring legislative intent**.

Compliance with Regulations to Provide Coherence

1. Regulations, enabling provision, and enabling legislation are presumed to constitute an **integrated scheme**, and are to be read as a whole.
2. Interpretation provisions (definitions and application) in the enabling legislation are presumed to apply to regulations (and other instruments)

Compliance with Common Law to Ensure Consistency

1. Incorporation: legislation sometimes **incorporates common law terms** or concepts. If so, using common law sources is appropriate to determine the meaning of a certain term or concept.
2. Codification and Displacement: Legislation can also codify common law rules/principles (give statutory form to pre-existing common law). In these cases, looking to common law sources is appropriate.
3. Sometimes, the purpose of legislation is to **modify or displace common law**.
 - a. Complete Code: Legislation to displace common law, or preclude further resort to the common law. (ex. Criminal law offences, but not defenses.)

Compliance with International Law to Comply with Obligations in that Legal Sphere.

1. Presumption that legislature intends to **comply with international law**, customary and conventional. (Presumption strongest in implementing legislation- legislation that makes international agreement domestic law)
 - a. This presumption receives **less weight if not implementing legislation**.

Compliance with the Rule of Law as an Overarching Requirement

2. Unwritten principle has full normative force but is often used as an interpretive aid. Can't be used alone to strike down otherwise valid legislation; it **must be anchored to a principle in the written text** of the Constitution.

General Pre-somptions Against:	<ol style="list-style-type: none"> 1. Extraterritorial application of legislation 2. Retroactive application of of legislation 3. Interfering with vested rights (both common law and statutory) 4. Applying legislation to the Crown and its Agents
Specific Pre-somption against Absurdity	<p>It is presumed that the legislature does not intent its legislation to produce absurd consequences. The clearer and more precise the text is, the greater the absurdity required to depart from its ordinary meaning.</p> <p>⇒ The greater the absurdity that flows from a particular provision, the more justified an interpreter is in rejecting in.</p> <p>Examples of Absurdity:</p> <ol style="list-style-type: none"> 1. Irrational distinctions: Treating like thing differently and different things alike. 2. Irrational, contradictory, or anomalous effects 3. Defeating the purpose of legislation. 4. Undermining the efficient application of the legislation 5. Violating important Norms of justice or fairness.

Extrinsic Aids to Statutory Interpretation

Aid	Description
Legislative Source	Agreements that the legislation was intended to implement; or legislation (either domestic or foreign) on which the legislation has been modelled in whole or part
Legislative History	Material brought to the attention of legislature during the legislative process (ministerial statements, committee reports, debates)
Legislative Evolution	Amendments and re-enactments of a provision from time of enactment to application (NOT after)
Expert Opinion	Precedent, administrative opinion, scholarly publications, testimony (anything relevant that won't surprise other party)

Rules about Meaning in Statutory Interpretation

Rule	Description	Burden/Rebuttal
Ordinary or Plain Meaning	The meaning that <u>spontaneously comes to the mind of a competent reader</u> when reading the text. This is presumed to be Parliament's intended meaning . This does not necessarily mean dictionary meaning	Presumption can be rebutted by evidence suggesting some other meaning was intended.
Technical Meaning	There is a presumption that legislatures use words in their popular, non-technical sense. ⇒ However, when legislation deals with a specialized subject and uses language that the people it governs would understand in a specialized way, that specialized understanding is preferred over ordinary usage .	Claiming that a text has a technical meaning, different from its popular meaning, involves establishing: 1. the technical meaning 2. that the technical meaning was intended in this context. Legal terms are considered technical terms. If there is a popular meaning and a legal meaning, the popular is presumed.
Shared Meaning	If there is a discrepancy between the versions, the <u>meaning that is shared by both is presumed to be the intended meaning</u> . ⇒ If one version is broader, the narrower version represents the shared meaning , unless there is evidence that the legislature intended the broader meaning.	Presumption in favour of shared meaning can be rebutted by evidence suggesting that some other meaning was intended.
Original Meaning	The meaning of the words used in a legislative text is presumed to be fixed at the time of enactment, but its application to facts is not. Static Interpretation: text is to be applied as it would have been when the legislation was first enacted. Dynamic: text is applied in light of circumstances and assumptions at the time of application.	Technical, concrete, and specific tends to attract static; general or abstract language attracts dynamic

Plausible Meaning	If the ordinary meaning is rejecting in order to give effect to legislature's actual or presumed intention, the adopted meaning must be one that the text can bear.	Sometimes ordinary meaning is breached and plausible meaning accepted in order to adapt to circumstances/legislative intentions
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Presumptions about Legislative Drafting in SI

Presumption	Description	Related Maxim
Straightforward Expression	The legislature chooses the clearest, simplest, and most direct way of stating its meaning.	
Uniform Expression	The legislature uses the same words and techniques to express the same meaning and different words and techniques to express different meanings.	<p>1. Implied Exclusion: <i>expressio unius est exclusio alterius</i>. (The express mention of one thing excludes all others) → If something is not mentioned in circumstances where would expect it to be mentioned, it is impliedly excluded.</p> <p>2. Associated Words: <i>Noscitur a sociis</i> (it is known from its associates) → the meaning of a word or phrase is affected by the other words with which it is linked.</p>
No superfluous words	Every word, every feature of the text is there for a reason and has a meaningful role to play in the legislative scheme.	<p>1. The legislature does not legislate in vain: no tautology or redundancy in legislation</p> <p>2. Limited Class or <i>eiusdem generis</i> (of the same kind, class, or nature). → When a list of things that all belong to an identifiable class is followed by a more general term, the general term may be read down to include only other things within the identifiable class. (Ice skating)</p>
Internal Coherence	All provisions in a legislative text fit together logically and work together coherently to achieve the purposes of the legislation.	<p>"<i>The legislature would have said X</i>"</p> <p>Pointing out that if the legislature had intended the proposed interpretation, it would have framed the legislation in a different way, as it did elsewhere in the Act (or regulation or statute book), is a legitimate basis for rejecting a proposed interpretation.</p>

Extras:

Rizzo v Rizzo Shoes (Iacobucci, SCC)

- S10 of Ontario Interpretation Act: remedial, best ensure benefit intended by act
- Plain meaning not enough, must look as scheme of Act (object, intention of legislature, context of words)
- Leg does not intend to produce absurd consequences
- Legislative history to determine intention entirely appropriate

Reference Re Supreme Court Act (SCC)

- Plain meaning has remained consistent since enactment
- Interpretation gives effect to important differences (uniform meaning rule: diff words for diff meanings)
- Purpose of legislation (Quebec representation, familiarity with Quebec civil law, culture)
- Consistent with broader scheme of Supreme Court Act
- Shared meaning rule of bilingual interpretation (when one ambiguous, look to other)
- Surrounding statutory context
- S5 requirements apply, s6 requirements are more specific and also apply for Quebec seats

Context: Words within Provision

Scheme: Act as a whole

Cheat Sheet for the Modern Approach to Statutory Interpretation

THE MODERN PRINCIPLE

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (Driedger: *Rizzo Shoes*)

Goal: A coherent interpretation of an ambiguous provision.

Three General Questions about the Statute

1. **TEXT:** What is the ordinary meaning of the words read alone?
2. **CONTEXT AND SCHEME:** What is the context? What is the meaning of the words read together with the rest of the Act, according to the legislature's intent?
3. **PURPOSE:** What is the meaning of the words, read in light of the purpose of the statute? (Reason for creating the statute, the kind of behaviour it concerns, and the consequences of the proposed interpretations)

Consider:

1. The application of the law to the facts
2. A judge's inclination to "do justice" on the basis of these facts and in the face of presumptions about what the legislature intended, and
3. Judicial concerns about creation good/bad precedent.

"Entire Context" means:

- A. Economic, political, and social relations
- B. The entire act, including its regulations
 - a. What are the purposes and objects of the Act?
 - i. This is to determine meaning and internal consistency
 - b. What do the other statutes, regulatory schemes, and principles say?
 - i. You should establish **horizontal coherence** if the statutory contexts are analogous
 - c. To establish **vertical coherence**, look to the following presumptions:
 - i. Constitution > all
 - ii. Federal > Provincial, if they conflict.
 - iii. Human Rights legislation > general legislation
 - iv. Subordinate legislation must be consistent with enabling statute
 - v. Domestic law should be interpreted consistently with international law.
 - d. What does the legislative history have to say?
 - i. Are the changes remedial? (Do they give, or are they intended as, a remedy?)
 - ii. Is there any relevant Parliamentary history?
 1. briefing notes, alternate drafts of the statute, Hansard, Committee reports, ministerial statements, press releases.

- C. What do earlier judicial precedent or previous interpretations say?
 - a. Unless an amendment intervenes
 - b. Pay attention to case date, jurisdiction, and court level.
- D. Are there any relevant interpretations made by administrative decision-makers?
 - a. Courts may defer to the specialized knowledge and expertise of administrative decision-makers.
 - i. They may also defer because overturning them could invalidate previous decisions or lead to a serious re-allocation of resources across the board.
- E. Are there any policy considerations particular to the subject-matter?
- F. What do the Interpretation Acts say?
- G. What does international law say?

“Grammatical and Ordinary Sense”

- A. Is the text plausibly unclear or ambiguous? If yes, Courts will depart from the ordinary sense of the text
- B. Often, Judges will look to the dictionary as an aid here.
- C. If the statute is bilingual, which version provides a narrower meaning?
 - a. That is the one the courts will prefer.

“Harmoniously with...”

- A. “The Scheme of the Act”
 - a. Is the act benefit conferring or quasi-constitutional (Human rights legislation)?
 - i. If yes, it requires a broad and generous approach, and ambiguities are to be resolved in favour of the claimant.
 - b. Is the act penal?
 - i. If yes, it requires a strict construction, and application in favour of the defendant.
 - c. Is it a regulatory statute or municipal law?
 - i. If yes, it requires a broad and purposive approach
 - d. What do the *X* say? These things all help understand the intended mischief to be remedied and the scope of the meaning.
 - i. Long title,
 - ii. preamble or purpose section,
 - iii. definitions
 - iv. headings and marginal notes for interpretive assistance
 - v. bilingual statutes, and
 - vi. schedules
 - e. Consider the subject matter of the statute.
 - i. Do the words bear a particular meaning in relation to that subject matter?
 - 1. Should a technical meaning be preferred?
 - 2. Does the legislature intend a broad or narrow meaning of a word?
 - f. What is the nature of the discretion that is delegated?

- g. Do any of these principles apply?
 - i. **Associated Words:** general word takes its meaning from the preceding specific words with which it is associated by words “and”/“or” (Principle of *noscitur a sociis*)
 - ii. **Limited Class:** the general phrase takes its meaning from the preceding specific words or phrases (*ejusdem generis*) [“all kinds of merchandise”, means “all kinds of merchandise, *of the same sort*”]
 - iii. **Implied Exclusion:** A general word or phrase takes its meaning from the words that surround it. The express mention of one thing excludes all others by necessary implication (*expressio unius, exclusio alterius*)
- h. Finally, do any other common law presumptions apply?
- B. “The Object of the Act”**
 - a. This requires a purposive approach.
 - b. Is your reading of the words read harmoniously with the purpose of the act?
- C. “The Intention of Parliament”**
 - a. Also requires a purposive approach, but you need to incorporate the **mischief rule**.
 - b. **Mischief Rule, applied:** Does your reading of the words “suppress the mischief the statute was designed to resolve?”
 - c. Is your reading of the words consistent with the s.12 of the Fed (but all have this provision) *Interpretation Act* provision that directs interpreters to give every enactment a “fair, large, and liberal interpretation that best achieves its objects”?
 - d. Does your reading of the words avoid absurdity?
 - i. Does it make irrational distinctions?
 - ii. Is it irrational, contradictory, or produce anomalous effects?
 - iii. Does it defeat the purpose of the legislation?
 - iv. Does it undermine the efficient application of the legislation?
 - v. Does it violate important norms of justice or fairness?

Modern Principle:

The words of an Act are to be read:

- 1) in their entire context,
- 2) in their grammatical and ordinary sense
- 3) **harmoniously** with:
 - a. the scheme of the Act,
 - b. the object of the Act,
 - c. and the intention of Parliament. (*Rizzo Shoes*)

List of Common Law Presumptions Used to Determine Legislative Intent:

- A. Legislative Purpose
 - a. Liberal Construction (preferred) v. Strict Construction

- B. Legislative Scheme
 - a. If there are Mistakes or Gaps in the Legislative Scheme:
 - i. Corrigible v. Incurable
 - b. Supplementing Legislation by Reliance on Common Law or the Civil Code

- C. Coherence in Statutory Scheme
 - a. General Compliance with Constitutional Law and Values
 - b. Compliance with Related Legislation to Provide Coherence
 - c. Compliance with Regulations to Provide Coherence
 - d. Compliance with Common Law to Provide Consistency
 - e. Compliance with International Law to Comply with Obligations in that Legal Sphere
 - f. Compliance with the Rule of Law as an Overarching Requirement

- D. General Presumptions Against:
 - a. Extraterritorial application of legislation
 - b. Retroactive application of legislation
 - c. Interfering with vested rights (both common law and statutory)
 - d. Applying legislation to the Crown and its Agents

- E. Specific Presumption Against Absurdity:
 - a. Irrational distinctions: Treating like thing differently and different things alike.
 - b. Irrational, contradictory, or anomalous effects
 - c. Defeating the purpose of legislation.
 - d. Undermining the efficient application of the legislation,
 - e. Violating important Norms of justice or fairness.

Rules About Meaning in Statutory Interpretation

- A. Ordinary or Plain Meaning
- B. Technical Meaning
- C. Shared Meaning
- D. Original Meaning
- E. Plausible Meaning

Presumptions About Legislative Drafting in Statutory Interpretation

- A. Straightforward Expression
- B. Uniform Expression
- C. No Superfluous words
- D. Internal Coherence