

Legal Research Guide

to Statutes

2007

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Legal Research Guide to Statutes

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The language of statutes - common terms defined

act - an alternative name for a statute - see **statute**.

assent - see **royal assent**.

bill - a bill is an incipient statute. When a bill has been passed in Parliament or a legislature, and has received royal assent, it becomes a statute.

codification - the process of collecting and arranging systematically, usually by subject, the laws of a state, or the rules covering a particular subject of the law.

commencement - upon commencement a statute becomes binding and becomes capable of producing legal effects. Commencement may occur at the same time as enactment or it may be delayed. A Federal statute commences on the date of assent unless the statute provides a starting date (**Interpretation Act**, R.S.C. 1985, c. I-21, s. 5(2)).

confiscatory legislation - the seizure of private property by a government without compensation to the owner.

consolidation or revision of statutes - a consolidation refers to the updating of legislation to reflect amendments, whereas a revision permits the form of legislation to be changed.

construction v. interpretation - These terms are commonly used interchangeably but "construction" is a term of wider scope than "interpretation." "Interpretation" is only concerned with the meaning of the subject matter. "Construction" may also explain the legal effects and consequences of the subject matter. Interpretation precedes construction, but stops at the written text. A rule of construction may govern the effect of an ascertained intention or may govern in the absence of any intention (**Black's Law Dictionary** (6th Ed.), p. 818).

convention - conventions are rules of the constitution that are not enforced by the law courts. Conventions prescribe the way in which legal powers shall be exercised (**Constitutional Law of Canada**, Peter W. Hogg, s. 1.10(a)).

declaratory statute - is enacted for the purpose of removing doubts about

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what the law is in relation to a particular subject matter.

delegated or subordinate legislation - legislation made not by Parliament but by persons or bodies on whom Parliament has conferred power to legislate on specified subjects (**The Oxford Companion to Law** by David M. Walker, 1982, p. 347).

delegatus non potest delegare - a delegate of a power cannot delegate the power unless authorised to do so (**Huth v. Clarke** (1890), 25 Q.B.D. 391).

directory act - a statute which is a mere direction or instruction of no obligatory force and involving no invalidating consequence for its disregard (**The Dictionary of English Law** by Earl Jowitt, 1959, p. 633).

ejusdem generis rule - a rule of construction, that general words following an enumeration of particulars, are to have their generality limited by reference to the preceding particular enumeration (**The Dictionary of English Law** by Earl Jowitt, 1959, p. 698).

enabling statute - a statute which makes it lawful to do something which would not otherwise be lawful is called an enabling statute (**Craies on Statute Law** (7th Ed.), p. 61).

enacting clause - a clause at the beginning of a statute which states the authority by which it is made.

expressio unius exclusio alterius - the express mention of one thing is the exclusion of another.

extrinsic aids - evidence in aid of interpretation of a statute drawn from a source outside of the statute.

generalia specialibus non derogant - general things do not derogate from special things.

golden rule - permits a court to depart from the ordinary meaning of a statute to avoid absurdity, repugnancy or inconsistency (**Sullivan and Driedger on the Construction of Statutes** (4th Ed.), p. 6).

green paper - policy document for discussion in parliament: in the United Kingdom or Canada, a document that contains the government's policy

proposals that are to be discussed in Parliament (**Encarta World English Dictionary**, 1999, p. 785). See also **white paper**.

interpretation - see **construction**.

intra vires - within the powers.

intrinsic aids - evidence in aid of interpretation of a statute drawn from a source within the statute itself.

legislation - preparation and enactment of laws.

literal interpretation - the interpretation of a statute according to its words alone, see **strict construction** below.

mandatory statutes - statutes which require a course of action. A mandatory provision in a statute is one the omission of which renders the proceedings, to which it relates, void (**Black's Law Dictionary** (6th Ed.), p. 962).

mischief rule - a rule of construction that requires a court to consider the mischief which the statute was meant to remedy. See **remedial statutes** below.

noscitur a sociis - the meaning of a word is or may be known from the accompanying words.

orders-in-council - an order made by the Queen by and with the advice of the Privy Council. Some orders-in-council are made under statutory authority and others are made by virtue of the royal prerogative.

ordinance - usually a term used to designate the enactments of the legislative body of a municipal corporation.

penal statute - a statute that imposes penalties and punishments for an offence committed.

peremptory - final, conclusive.

peremptory statute - an obligatory statute, as opposed to a permissive statute (**The Dictionary of English Law** by Earl Jowitt, 1959, p. 1329).

permissive - allowed, allowable.

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preamble - a clause at the beginning of a statute explanatory of the reasons for its enactment and the objects sought to be accomplished.

presumptions - an inference in favour of a particular fact. A presumption is a rule of law by which the finding of a basic fact gives rise to the existence of a presumed fact, until the presumption is rebutted.

private statutes - are generally in the interest of individuals or local governments and are distinguished from measures of public policy in which the whole community is interested (**Mozley and Whiteley's Law Dictionary** (7th Ed.), 1962, p. 273).

proclamation - the act of publically proclaiming or publishing, a formal declaration. Statutory proclamations are issued by the Crown, not under the prerogative, but under statutory authority (**The Oxford Companion to Law** by David M. Walker, 1982, p. 1004).

prohibit - to forbid by law, to prevent.

prospective statute - one applicable only to cases which arise after its enactment.

public statutes - affect the whole community or a considerable part of it.

regulations - subordinate legislation by government departments under the authority of acts of Parliament or acts of a legislature.

remedial statutes - historically remedial statutes included statutes designed to cure mischief, advance religion or confer public benefits. But all Canadian jurisdictions have enacted provisions along the lines of "Every enactment is deemed remedial" (**Sullivan and Driedger on the Construction of Statutes** (4th Ed.), pp. 381, 382).

retroactive statutes - "to have come into force on a date prior to its enactment" means retroactive; and "be operative with respect to transactions occurring prior to its enactment" means retrospective, per Dickson, J. in **Gustavson Drilling (1964) Ltd. v. Minister of National Revenue**, [1977] 1 S.C.R. 271; 7 N.R. 401.

retrospective statutes - see **retroactive statutes**.

revision of statutes - see **consolidation**.

royal assent - the act by which the Crown agrees to a bill already passed by Parliament or a provincial legislature. By convention this is a formality only (**Constitutional Law of Canada**, Peter W. Hogg, s. 1.10(a)).

rules of court - rules that regulate the practice and procedure before the various courts.

standing orders - rules that govern the procedure in a legislature, council, society, etc. (**Canadian Oxford Dictionary** (2nd Ed., 2004), p. 1518).

statute - a formal written enactment of a legislative body.

strict construction - strict or literal construction of a statute recognizes nothing that is not expressed, takes the language used in its exact and technical meaning and admits no equitable considerations (**Black's Law Dictionary** (6th Ed.), p. 313).

subordinate legislation - see **delegated or subordinate legislation** above.

sui generis - unique, of its own kind.

ultra vires - beyond the powers.

white paper - an official government report: in many countries, an official report setting out government policy on a particular issue to be voted on by the country's legislature (**Encarta World English Dictionary**, 1999, p. 785). See also **Green paper** above.

Legal Research Guide to Statutes

Chapter 1 - Introduction

1.1 Scope of this guide

Legal research is the process of finding a case, statute, regulation, text, etc., that is relevant to a legal issue.

How does a lawyer resolve a legal issue? First, the lawyer must identify the issue. The issue can, in many cases, be resolved by finding a binding case (a precedent) or a relevant statute or regulation. Case law and statutes and regulations are referred to as primary sources of the law.

This legal research guide is meant to provide instruction on **how to find cases** that are relevant to an issue in the law of statutes and statutory interpretation. This guide **does not** provide instruction on how to find statutes or regulations. For instructions on finding statutes, see:

Legal Research Handbook (5th Ed. 2003), by D.T. MacEllven et al.;
and

Legal Writing and Research Manual (6th Ed. 2004), by M.J. Iosipescu and P.W. Whitehead.

Each section in this guide refers to a principle and to cases that apply the principle. At the end of each section is one of Maritime Law Book's key numbers that can be used to search for additional cases that apply the principle - use a key number to search in print law reports or at www.mlb.nb.ca. A key number can be used to do a computer search of a single province or to search simultaneously every common law jurisdiction in Canada. The MLB key numbers set out below are preceded by the words "**Search aid**".

The MLB key numbers are useful because a point of law in a case is always assigned the same key number by MLB editors. For example, the key number **Statutes Topic 503** is assigned to all cases that consider the avoidance of unreasonable results. A list of MLB key numbers is found in any recent MLB digest (a digest covers 10 volumes in any report series) and at www.mlb.nb.ca. To generate a key number list of cases, at www.mlb.nb.ca click on "Key Number Search", click on a title, such as **Statutes**, and then click on the key number.

See Appendix in this guide for a complete list of all the key numbers assigned by MLB editors to headings in the topic **Statutes**.

Appendix also includes under each key number a list of cases that have been assigned to the key number.

In addition to the case law a researcher should consult texts on the subject of statutes. For example, see:

Sullivan and Driedger on the Construction of Statutes (4th Ed. 2002).

For a text on doing legal research of both case law and statute law, see:

Legal Research Handbook (5th Ed. 2003) by Douglass T. MacEllven et al., published by Lexis/Butterworths.

1.2 Supremacy of legislation

In Canada, the Parliament and the provincial legislatures have the sovereign power to legislate in their respective fields of jurisdiction. This principle is known as Parliamentary Sovereignty or Parliamentary Supremacy.

Since 1982 these sovereign powers have been limited by the **Canadian Charter of Rights and Freedoms**.

Legislation may expressly amend the common law. In the case of **R. v. Mills (B.J.)** (1999), 248 N.R. 101; 244 A.R. 201; 209 W.A.C. 201 (S.C.C.), the Supreme Court of Canada stated at para. 44, "The question before us is not whether Parliament can amend the common law, it clearly can".

See **Sullivan and Driedger on the Construction of Statutes** (4th Ed. 2002), p. 340:

"Legislation is paramount. It follows from the principle of legislative sovereignty that validly enacted legislation is paramount over the common law."

1.3 Enactment of legislation

A federal public statute starts as a bill and is introduced during a

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session of Parliament. After a bill is passed in the House of Commons and the Senate, it is sent to the Governor-General to receive Royal Assent, after which a bill becomes an act or statute. For each calendar year, all new acts are bound in an annual volume called the Statutes of Canada. The annual volume of the Statutes of Canada includes amendments to existing statutes.

The procedure for the enactment of a provincial statute is similar to the enactment of a federal statute.

Statutes may be either public or private. A public statute applies to the whole community or a considerable part of it. A private statute relates to particular persons or to particular places.

The term "legislation" includes subordinate legislation. Subordinate legislation is enabled or made under powers conferred by a statute and includes regulations, orders, bylaws, etc.

1.4 Citation of a statute

When a statute is enacted it is given a chapter number. For example, **Extradition Act**, S.C. 1999, c. 18, refers to a statute, the **Extradition Act**, enacted in 1999 by Parliament and assigned the chapter number 18. Similarly, **Bank Act**, S.C. 1991, c. 46, refers to and is the citation for a statute, the **Bank Act**, enacted in 1991 by Parliament and assigned the chapter number 46.

Usually every 10 or more years, both the federal and provincial governments revise and consolidate their public statutes. When a revision is complete the former versions are repealed. For example, **Criminal Code**, R.S.C. 1985, c. C-46, refers to and is the citation for the Criminal Code of Canada that is found in chapter C-46, in the Revised Statutes of Canada 1985.

Only public statutes are published in a revised edition of statutes.

Provincial statutes are cited in a similar manner, for example, **Legal Profession Act**, S.B.C. 1998, c. 9, refers to a statute, the **Legal Profession Act**, enacted by the British Columbia legislature in 1998 and assigned the chapter number 9.

1.5 Statute Citators

A basic function of a statute citator is to alert the researcher to any statutes that have been judicially considered. Each volume of any series of

MLB law reports includes an index titled **Index to Statutes Noticed**. MLB editors include in this index any statute, regulation or rule of court, etc., that is the subject of a judicial comment.

Some statute citators contain a list of statutes for a selected province or for Canada and indicate whether the statute was amended. Such amendments can also be found by consulting the annual volume of statutes for a province or for Canada.

Chapter 2 - Operation and effect of statutes

2.1 Contracting out of a statute, when prohibited

In the case of **Mandos v. Ontario New Home Warranty Program** (1995), 86 O.A.C. 382 (C.A.), the Ontario Court of Appeal stated:

"The **Ontario New Home Warranties Plan Act**, R.S.O. 1990, c. O-31, is remedial legislation and should be given a fair and liberal interpretation. Section 13(6) of the **Act** is a difficult subsection to construe. However, we believe that the interpretation given to it by counsel for the respondents is a proper one, i.e., that the warranties contained in s. 13(1) continue in force, irrespective of any agreement by the parties to the contrary. This interpretation, in our opinion, achieves a fair and just result. The Corporation is desirous that builders and owners should settle their differences, and s. 13(4) of the **Regulations** contemplates that if such a settlement is made, it will not affect the Corporation's rights of subrogation. When a mutual release is executed between an owner and a builder, it is quite possible, as in the present case, that there may be defects which could not be discovered by reasonable inspection. If it is the intention of the legislature that a release should be a bar to any action by an owner for breach of the warranties in s. 13(1), then, in our opinion, the legislation should clearly so provide and owners should be warned of the dangers of entering into a release."

In the case of **SCC Construction Ltd. et al. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada et al.** (1987), 64 Nfld. & P.E.I.R. 195; 197 A.P.R. 195 (Nfld. C.A.), the Newfoundland Court of Appeal stated at paras. 35 to 37:

"[35] There is no doubt that a contract which is expressly or implicitly prohibited by statute is illegal and unenforceable (**Cope v. Rowlands** (1836), M & W 149; **Anderson Ltd. v. Daniel**, [1924] 1 K.B. 138; **St. John Shipping Corporation v. Joseph Rank Ltd.**, [1957] 1 Q.B. 267). The question arises whether parties to a contract may by mutual agreement avoid the incidences of a statute and make effective that which the legislation prohibits.

"[36] As a general rule one may agree to waive benefits conferred

upon him by an Act of a Parliament or Legislature unless it can be demonstrated that it would be contrary to public policy to allow such agreement. The case of **Griffiths v. The Earl of Dudley** (1891-1892), 9 Q.B.D. 357, is illustrative of this principle. There the Employers Liability Act had been enacted to make an employer liable for death or injury to an employee occasioned by negligence of a fellow employee. The deceased whose death had been caused by neglect of an inspector in the same employer's colliery, had entered a contract exempting his employer from vicarious liability notwithstanding the benefit otherwise conferred upon him by the Act. The issue before the court was whether the workman could contract himself out of the benefits of that Act and, in dealing with this issue, the court addressed the argument that the contract was void as being against public policy. In declining to conclude the contract was contrary to public policy Field, J., stated at p. 363:

'It is at least doubtful whether, where a contract is said to be void as against public policy, some public policy which affects all society is not meant. Here the interest of the employed only would be affected.'

"[37] **Cheshire & Fifoot The Law of Contract** (8th Edition), deals with the inability of parties to a contract to avoid incidences of a statute that are enacted in furtherance of public policy. At p. 312 the authors state:

'If a contract in fact made by the parties is expressly forbidden by the statute, its illegality is undoubted. But where it is alleged that the prohibition is implied, the court is presented with a problem the solution of which depends upon the construction of the statute. What must be ascertained is whether the object of the legislature is to forbid the contract ... if even one of the objects is the protection of the public or the furtherance of some other aspect of public policy, a contract that fails to comply with the statute is implicitly prohibited. But no one test is decisive, for in every case the purpose of the legislature must be considered in the light of all the relevant facts and circumstances.'"

And in the same case, **SCC Construction Ltd. et al. v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada et al.**, the headnote

stated in part:

"Section 95(1)(b) of the **Labour Relations Act** prohibited strikes during the term of a collective agreement - The Newfoundland Court of Appeal held that unions and employers could not by collective agreement contract out of s. 95(1)(b) and make illegal strikes legal - See paragraphs 33 to 42."

Search aid - MLB Key No. - **Statutes Topic 4508** is assigned to cases that consider the effect of contracting out of the benefits or burdens of a statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.2 Validity of statutes, judicial review

Overview: A vague statute may be invalid if it violates principles of the **Canadian Charter of Rights and Freedoms 1982**. Before 1982 the courts did not have the authority to pass judgment on the validity of statutes.

.....

In the case of **R. v. Wonderland Gifts Ltd.** (1996), 140 Nfld. & P.E.I.R. 219; 438 A.P.R. 219 (Nfld. C.A.), the Newfoundland Court of Appeal stated at para. 32:

"[32] From the foregoing discussion a consensus can be readily discerned as to the absence of judicial power at common law to declare legislation inoperative on the grounds of vagueness, and agreement that courts are rather constrained to place meaning upon ambiguous statutory provisions however difficult that may be. The rationale of this approach can be traced to the Doctrine of the Separation of Powers whose application, although allowing for a role for judicial law-making co-incident with its function of statutory interpretation and application, precludes the judiciary from setting aside legislative enactments. Indeed, the usurpation of such a role by courts may be viewed as the antithesis of democracy."

In the case of **R. v. Nova Scotia Pharmaceutical Society et al. (No. 2)** (1992), 139 N.R. 241; 114 N.S.R.(2d) 91; 313 A.P.R. 91 (S.C.C.), the Supreme Court of Canada stated at para. 71:

"The doctrine of vagueness can therefore be summed up in this proposition: a law will be found unconstitutionally vague if it so lacks

in precision as not to give sufficient guidance for legal debate."

Search aid - MLB Key No. - **Statutes Topic 4552** is assigned to cases that consider whether a statute is unconstitutionally vague. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.3 Enactment procedure, judicial review

The courts are not entitled to review the enactment procedure of a statute. In the case of **Mount Pearl (City) et al. v. Newfoundland (Minister of Provincial and Municipal Affairs)** (1991), 99 Nfld. & P.E.I.R. 271; 315 A.P.R. 271 (Nfld. T.D.), the headnote stated:

"Validity - Enactment procedure - The province passed legislation that would amalgamate Mount Pearl with other municipalities - Mount Pearl submitted that the Bill was invalid because the resolution which proceeded it was invalid - The resolution was invalid because the Minister failed to follow the proper procedure when appointing the commissioners who did the feasibility study, because the Minister failed to follow the commissioners' recommendations and because the resolution did not follow the format of the original notices - The Newfoundland Supreme Court, Trial Division, stated that provided the legislature stayed within its jurisdiction, it was not open to the courts to go behind the legislation and inquire into the procedure which led up to it - See paragraphs 17 to 32."

Search aid - MLB Key No. - **Statutes Topic 4543** is assigned to cases that consider the review by the courts of the enactment procedure for a statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.4 Legislation by reference, what constitutes

In the case of **R. v. St. Lawrence Cement Inc.** (2002), 162 O.A.C. 363 (C.A.), the Ontario Court of Appeal stated at paras. 18 to 20:

"[18] A helpful discussion of the legislative device of incorporation by reference is to be found in F. Bennion, **Statutory Interpretation**, 3rd Ed. (London: Butterworths, 1997), at 585-591. It enables the legislative draftsman to include provisions of earlier statutes or other documents into statutes or regulations without actually reproducing the language of the statute or document. As Bennion points out, incorporation by reference is a common device of legislators in

accordance with the maxim 'verba relata hoc maxime operantur per referentiam rit it eis inesse videntu' (words to which reference is made in an instrument have the same operation as if they were inserted in the instrument referring to them). The effect of incorporation by reference is that the material incorporated is considered to be part of the text of the legislation.

"[19] In a case not unlike this appeal, the British Columbia Court of Appeal held that incorporation by reference was complete without publication of the text of the incorporated documents in the **Canada Gazette: R. v. Collins (R.) et al.** (2000), 140 B.C.A.C. 311; 229 W.A.C. 311; 148 C.C.C.(3d) 308 (C.A.). The court held that it was unnecessary to publish a regulatory standard incorporated by reference together with the regulation before a prosecution based on contravention of the standard could be pursued. It further held at p. 318 [C.C.C.] that incorporation by reference does not require that the text of the incorporated document be reproduced in the incorporating statute or regulation. See, also, **Dennison Mines Ltd. v. Ontario Securities Commission** (1981), 122 D.L.R.(3d) 98 (Ont. Div. Ct.).

"[20] I would adopt and apply the following statement of the law of Rowles, J.A., in **Collins** at p. 316 [C.C.C.]:

'When material is incorporated by reference into a statute or regulation it becomes an integral part of the incorporating instrument as if reproduced therein. In that regard, see **Mainwaring v. Mainwaring**, [1942] 2 D.L.R. 377 (B.C.C.A.), in which McDonald, C.J.B.C., referred to the effect of referential legislation in relation to the incorporating statute, at p. 380:

"... Legislation by reference ... has been consistently construed not to be ambulatory in its effect, but to incorporate the extrinsic law as at the date of the Act that is being construed, and to be unaffected by subsequent change of the law incorporated: [citations omitted.] *The effect of such legislation is as though the extrinsic law referred to was written right into the Act ."* (Emphasis in original)

Search aid - MLB Key No. - **Statutes Topic 4606** is assigned to cases that consider what constitutes legislation by reference. See www.mlb.nb.ca and

Appendix for a list of cases that dealt with this issue.

2.5 Enabling statutes

Overview: The term enabling statute is applied to a statute that confers new powers. An example is a statute that confers the power to expropriate private property.

.....

In the case of **R. v. Myers (D.J.)** (1991), 91 Nfld. & P.E.I.R. 37; 286 A.P.R. 37 (Nfld. C.A.), the headnote stated:

"What constitutes an enabling act - The Criminal Code, R.S.C. 1985, c. C-46, s. 577(a), provided that where there has been no preliminary inquiry, an indictment shall not be preferred without the written consent of the Attorney General - No other Code section provided that an indictment could be preferred in the absence of a preliminary inquiry - The Newfoundland Supreme Court, Trial Division, held that s. 577 was enabling - See paragraphs 17 to 37."

Search aid - MLB Key No. - **Statutes Topic 4803** is assigned to cases that consider what constitutes an enabling statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.6 Enforcement of enabling statutes

In the case of **Mountstephen Construction Ltd., Re** (1977), 6 A.R. 607 (T.D.), the headnote stated:

"Enforcement of enabling acts - Enforcement of statutory rights - The Alberta Supreme Court, Trial Division, stated that common law remedies are available to enforce statutory rights and liabilities in the absence of specific statutory remedies - See paragraphs 6 and 7."

Search aid - MLB Key No. - **Statutes Topic 5183** is assigned to cases that consider the enforcement of an enabling statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.7 Delegated legislation

Overview: The law of the land includes, in addition to the common

law and statute law, a great deal of subordinate or delegated legislation. Subordinate or delegated legislation comprises orders, rules, regulations, by-laws, etc., made under statutory powers. Such delegation has become a normal feature of law-making in Canada.

Chapter 2.2 above refers to the limited authority of the courts to canvass the validity of statutes. Unlike statutes, the courts will canvass the validity of delegated legislation to ensure that all the conditions precedent to the validity of the rule, regulation, etc., have been fulfilled.

.....

In the case of **Sutherland et al. v. Canada (Attorney General) et al.** (2002), 170 B.C.A.C. 233; 279 W.A.C. 233 (C.A.), the British Columbia Court of Appeal stated at paras. 69 to 73:

"[69] Driedger refers to 'subsidiary laws', known by a variety of expressions including regulations, rules, orders, bylaws, and ordinances or, collectively, as 'subordinate or delegated legislation'. He then divides subsidiary laws into categories, including Orders-in-Council in the first category, which includes 'laws made by the executive or by some body or person that is subject to some degree of control by the executive'. He says that, although it is not identical to a statute, 'all subordinate legislation constitutes law'. Accordingly, to the extent that the Order-in-Council was within the authority granted in the over-arching legislation, its validity cannot be questioned: E.A. Driedger, **The Construction of Statutes**, Appendix IV, Subordinate Legislation, pp. 274-277.

"[70] It is clear that statutory authority may be conferred by subordinate legislation. In **Reference Re Validity of Regulations in Relation to Chemicals**, [1943] S.C.R. 1, Chief Justice Duff said:

'One observation of a general character remains. It is possible that in what has been said above it has not been sufficiently emphasized that every order in council, every regulation, every rule, every order, whether emanating immediately from His Excellency the Governor General in Council or from some subordinate agency, derives its legal force solely from the **War Measures Act**, or some other **Act** of Parliament. All such instruments derive their validity from the statute which creates the power, and not from the executive body by which

they are made. (**The Zamora** [1916] 2 A.C. 77 at 90)'

"[71] Orders-in-Council are also considered **Regulations** under the **Interpretation Act**, R.S.C. 1985, c. I-21. Section 2(1) defines 'regulation' as including an 'order ... made or established ... (a) in the execution of a power conferred by or under the authority of an Act, or (b) by or under the authority of the Governor in Council'.

"[72] Orders-in-Council are 'official Cabinet decisions, signed by Her Majesty's representative and usually made pursuant to a power granted by statute'. They are instruments through which 'specific responsibilities conferred upon the government under [an] Act are carried out'; they may be the means by which the government passes, approves or adopts a regulation, or may be the means by which the government confers jurisdiction upon an authority to exercise particular powers: L. Dussault & L. Borgeat, **Administrative Law, A Treatise** (2nd Ed. 1985), vol. 1, p. 268. Indeed, Proudfoot, J., as she then was, stated that Orders-in-Council are 'the general medium by which ... many statutory powers conferred on the [Governor] in Council are exercised' in **Coyle v. British Columbia (Minister of Education)**, [1978] 6 W.W.R. 279 (B.C.S.C.), at p. 286.

"[73] **Halsbury's Laws of England** (4th Ed., Reissued 1995), vol. 44(1), paras. 1499-1500, also recognizes Orders-in-Council as a type of subordinate legislation which has 'the full force and effect of an Act'."

2.8 Delegated legislation, sub-delegation

In the case of **Peralta et al. v. Ontario** (1985), 7 O.A.C. 283 (C.A.), the Ontario Court of Appeal stated at paras. 35 and 36:

"[35] When courts have considered whether delegation of ministerial powers was intended considerable weight has been given to 'administrative necessity', that is, it could not have been expected that the Minister (in this case the Governor in Council) would exercise all the administrative powers given to him. Further, in such cases the suitability of the delegate has been a material factor in determining whether such delegation is intended and lawful. See Lanham, '**Delegation and the Alter Ego Principle**' (1984), 100 Law. Q. Rev. 587.

"[36] 'There is no rule or presumption for or against sub-delegation': Driedger, '**Subordinate Legislation**' (1960), 38 Can. B. Rev. 2 at p. 22. The language of the statute must be interpreted in light of what the statute is seeking to achieve. As Professor Willis pointed out, the maxim 'delegatus non potest delegare' does not state a rule of law; it is 'at most a rule of construction' and in applying it to a statute 'there, of course, must be a consideration of the language of the whole enactment and of its purposes and objects'. Willis, '**Delegatus Non Potest Delegare**' (1943), 21 Can. B. Rev. 257."

Search aid - MLB Key No. - **Statutes Topic 5312** is assigned to cases that consider the validity of the sub-delegation of a statutory power. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.9 Delegated legislation, extent of delegation

In the case of **Berteit v. Carlisle** (1987), 80 N.B.R.(2d) 153; 202 A.P.R. 153 (T.D.), the headnote stated:

"Delegated legislation - Prohibition against including substantive law - The Legislature authorized the Lieutenant-Governor in Council to make regulations under the New Brunswick Police Act - The New Brunswick Court of Queen's Bench, Trial Division, stated that such a delegation does not include the power to provide substantive rules which should have been included in the statute (see paragraph 14)."

Search aid - MLB Key No. - **Statutes Topic 5314** is assigned to cases that consider the prohibition against including substantive law in the delegated legislation. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.10 Delegated legislation, what constitutes a regulation

In the case of **Michaels et al. v. Red Deer College** (1975), 5 N.R. 99 (S.C.C.), the headnote stated:

"Delegated legislation - Regulations - What constitutes a regulation - Alberta Regulations Act, s. 2(2) - The Supreme Court of Canada stated that an appointment of a teacher to a position at the Red Deer College pursuant to an order in council did not constitute a regulation subject to the filing provisions of the Regulations Act - See paragraphs 14 and 15."

Search aid - MLB Key No. - **Statutes Topic 5353** is assigned to cases that consider what constitutes a regulation. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.11 Delegated legislation, conflict with common law

In the case of **Saskatchewan Insurance, Office and Professional Employees' Union, Local 397 v. Saskatchewan Government Insurance** (1984), 34 Sask.R. 2 (Q.B.), the headnote stated:

"Delegated legislation - Regulations - Validity of - Conflict with common law - On a certiorari application, Queen's Bench Rule 669 required the tribunal to return to the court the 'conviction, order, decision and reasons therefore together with the process commencing the proceeding, and all other things touching the proceeding' - The Saskatchewan Court of Queen's Bench held that the rule was ultra vires to the extent that it altered or expanded the common law definition of 'the record'."

Search aid - MLB Key No. - **Statutes Topic 5364.1** is assigned to cases that consider the validity of a regulations that conflict with the common law. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.12 Delegated legislation, ultra vires

In the case of **Pacific Pilotage Authority v. Alaska Trainship Corp.** (1979), 35 N.R. 271 (S.C.C.), the headnote stated:

"Delegated legislation - Regulations - Validity of - Ultra vires - Whether purpose of regulation authorized by empowering statute - Ss. 9(2) and 10(1) of the Pacific Pilotage Regulations made compulsory pilotage conditional upon place of registration of ships - The Pilotage Act, S.C. 1970-71-72, c. 52, s. 12, stipulated that the primary object of the Pacific Pilotage Authority was safety and s. 14 empowered the Authority to make regulations to that end - The Supreme Court of Canada affirmed the decision of the Federal Court of Appeal that the condition in the Regulations respecting place of registration was invalid, where it did not relate to safety and was in the circumstances an irrelevant consideration - See paragraphs 20 to 24."

Search aid - MLB Key No. - **Statutes Topic 5367** is assigned to cases that consider the validity of a regulation and the authority of the empowering statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.13 Delegated legislation, validity, vagueness

In the case of **Canadian Pacific Ltd. v. Canadian Transport Commission** (1988), 86 N.R. 360 (F.C.A.), the headnote stated:

"Delegated legislation - Regulations - Validity - Vagueness or lack of particularity - The Canadian Transport Commission issued an order adopting by reference a Uniform Classification of Accounts for railways - A few weeks later it sent a letter to interested parties containing a copy of relevant revisions to make its previous order meaningful - The Federal Court of Appeal held that the order was invalid for vagueness, which was not cured by the subsequent explanatory letter - See paragraphs 12 to 16."

Search aid - MLB Key No. - **Statutes Topic 5369** is assigned to cases that consider whether a regulation is void for vagueness. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.14 Delegated legislation, repeal of empowering statute

In the case of **Diamond Motel Ltd. v. Jasper School Board** (1977), 2 A.R. 586 (T.D.), the headnote stated:

"Delegated legislation - Effect of the repeal of empowering statute - Preservation of validity of order - Interpretation Act, s. 24(1) - The Jasper School District Board of Trustees was empowered to impose and collect taxes pursuant to an order of the Minister of Education, dated September 5, 1956, made pursuant to the School Act 1952, s. 304 - The order dated September 5, 1956, was not replaced when successive statutes, containing sections similar to s. 304, were enacted in substitution of the School Act 1952 - A taxpayer challenged the authority of the Jasper School District to impose and collect taxes for year 1973 - The Alberta Supreme Court, Trial Division, held that the order of September 5, 1956, remained valid by virtue of s. 24(1) of the Alberta Interpretation Act - S. 24(1) stated that regulations or orders, made under a repealed statute, remain in force where 'other provisions are substituted by way of amendment, revision or consolidation' - See

paragraphs 10 to 42."

Search aid - MLB Key No. - **Statutes Topic 5588** is assigned to cases that consider the effect of the repeal of an empowering statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.15 Delegated legislation, orders-in-council, validity

In the case of **Templeton Place Ltd. v. Delano** (1985), 69 N.S.R.(2d) 211; 163 A.P.R. 211 (C.A.), the headnote stated:

"Delegated legislation - Orders-in-council - Validity - The Nova Scotia Court of Appeal stated that 'Orders-in-council exclusively of a legislative nature, where the Governor in Council purports to exercise a power specifically delegated to him by the Legislature by statute, are not challengeable by certiorari any more than are the statutes themselves' - See paragraph 27."

Search aid - MLB Key No. - **Statutes Topic 5518** is assigned to cases that consider the validity of orders-in-council. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

2.16 Delegated legislation, orders, etc. made pursuant to regulations

In the case of **Weatherall v. Canada; Conway v. R.; Spearman v. Collins Bay Penitentiary Disciplinary Tribunal** (1987), 11 F.T.R. 279 (T.D.), the headnote stated:

"Delegated legislation - Directives made pursuant to regulations - Nature and effect - The Federal Court of Canada, Trial Division, stated that an infringement of a penitentiary commissioner's directive may give rise to disciplinary action within the institution but the directive creates no legal rights or obligations - See paragraph 63."

Paragraph [63] stated:

"[63] In particular, as I have indicated at various points earlier, the Commissioner's Directives cannot be regarded as 'law' within the meaning of section 1. There is persuasive jurisprudence to this effect, based on the rationale that Commissioner's Directives are designed for the internal management of prison institutions. Their infringement may give rise to disciplinary action within the institution, but they

create no legal rights or obligations. [See footnote 45]. Counsel for the defendants and respondent cited to me decisions of the Federal Court of Appeal which he contended refuted this jurisprudence. On examination I am satisfied these decisions [See footnote 46] do no such thing and in fact expressly distinguish the situations dealt with there from the leading decision of four judges of the Supreme Court in *Martineau* to the effect that Commissioner's Directives are not law."

In the case of **Mohammad v. Minister of Employment and Immigration** (1988), 91 N.R. 121 (F.C.A.), the headnote stated:

"Delegated legislation - Orders or directives made pursuant to regulations - Nature and effect of - The Federal Court of Appeal held that the Supreme Court of Canada in *Martineau* and *Butters v. Matsqui Institution Disciplinary Board*, 14 N.R. 284, established that policy directives, whether made pursuant to regulatory authority or general administrative capacity, are no more than directions and are unenforceable by members of the public - See paragraph 14."

Search aid - MLB Key No. - **Statutes Topic 5543** is assigned to cases that consider the effect of orders, etc. made under regulations. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

Chapter 3 - Operation and effect, on earlier statutes

3.1 Effect of Amendments

In the case of **Sherwin-Williams Co. v. Walls Alive (Edmonton) Ltd.** (2003), 327 A.R. 386; 296 W.A.C. 386 (C.A.), the Alberta Court of Appeal stated at para. 13:

"[13] There is a presumption that, absent a clear indication to the contrary, the legislature does not intend to derogate from established law. In **Goodyear Tire & Rubber Co. of Canada v. Eaton (T.) Co.**, [1956] S.C.R. 610, at p. 614; [1956] 4 D.L.R.(2d) 1 at pp. 5-6, Fauteux, J., stated:

'The construction of this subsequent enactment ... is subject to the rule that a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed. (**Maxwell On Interpretation of Statutes**, 9th Ed.). There [is] a presumption against the implicit alteration of the law ...'"

Search aid - MLB Key No. - **Statutes Topic 6141** is assigned to cases that consider the effect of amendments on earlier statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.2 Effect of implied repeals

In the case of **Meridian Development Ltd. v. Nu-West Group Ltd.** (1984), 52 A.R. 248 (C.A.), the Alberta Court of Appeal stated at para. 19:

"[19] The general rule is stated in **Craies on Statute Law** (7th Ed.), page 366: 'Where two Acts are inconsistent or repugnant, the later will be read as having impliedly repealed the earlier'. In **Maxwell on Interpretation of Statutes** (12th Ed.), page 193 the rule is stated quoting Smith, L.J., in **Kutner v. Phillips**, [1891] 2 Q.B. 267, at 272:

'If ... "the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together" the earlier is abrogated by the later.'

"[20] Though stated by eminent authority the rule, nevertheless, has a shabby reputation. 'We ought not to hold a sufficient Act repealed, not expressly as it might have been, but by implication, without some strong reason', said Lord Bramwell in **G.W. Ry. Co. v. Swindon** (1883), 9 App. Cas. 787, at 809. 'Repeal by implication is never favoured' said Anglin, J., in **Canadian Westinghouse Co. v. Grant**, [1927] S.C.R. 625, at 630. Many other similar statements may be found; several are quoted in the judgment of this court in **Re Otto Bartel Homes Ltd. and the City of Calgary** (1972), 30 D.L.R.(3d) 184 (Alta. C.A.)."

Search aid - MLB Key No. - **Statutes Topic 6226** is assigned to cases that consider the effect of implied repeals of earlier statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.3 Operation and effect, what constitutes a conflict of statutes

In the case of **R. v. Dow Chemical** (2000), 130 O.A.C. 26 (C.A.), the Ontario Court of Appeal stated at para. 51:

"[51] The paramountcy provisions in the EPA and the OHSA do not assist Dow. They are relevant when there is a conflict between statutes. There is no conflict between the EPA and the OHSA. There is an overlap, perhaps even a duplication. But overlap and duplication are different from conflict. As expressed by Dickson, J., in **Multiple Access Ltd. v. McCutcheon et al.**, [1982] 2 S.C.R. 161; 44 N.R. 181, at 190, 'duplication is ... "the ultimate in harmony" '. Dickson, J., continued, at p. 191:

'In principle, there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says "yes" and the other says "no"; "the same citizens are being told to do inconsistent things"; compliance with one is defiance of the other.'"

In the case of **Urban Outdoor Trans Ad et al. v. Scarborough (City)** (2001), 141 O.A.C. 37 (C.A.), the Ontario Court of Appeal stated at para. 21:

"[21] As was said by Anglin J. in **Toronto Railway Co. v. Paget** (1909), 42 S.C.R. 488, at 499, 'It is not enough to exclude the

application of the general Act that it deals somewhat differently with the same subject-matter. It is not "inconsistent" unless the two provisions cannot stand together."

Search aid - MLB Key No. - **Statutes Topic 6252** is assigned to cases that consider what constitutes a conflict between statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.4 Status of proceedings started under repealed statute

In the case of **Westeel-Rosco Ltd. v. Board of Governors of South Saskatchewan Hospital Centre** (1976), 11 N.R. 514 (S.C.C.), the headnote stated in part:

"Operation - Effect on earlier statutes - Remedies - Successor statute - Transition provisions - Availability of remedies under old act - Mechanics' Lien Act, S.S. 1973, c. 72, succeeded the Mechanics' Lien Act, R.S.S. 1965, c. 277 - Status of action begun before passing of new Act, but tried after enactment of new Act - The new Act specifically precluded an action against the defendant - Section 61(1) of the new Act provided that a pre-existing action continued in effect in all respects - The plaintiff's action, although unenforceable as a Mechanics' Lien, was permitted under the old Act against the holdback - The Supreme Court of Canada held that under s. 61(1) the action continued to be valid as a claim against the holdback and to be governed by the old Act - See paragraphs 13 to 17."

Search aid - MLB Key No. - **Statutes Topic 6348** is assigned to cases that consider the continuation of proceedings commenced under a repealed statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.5 Preservation of rights acquired under repealed statute

In the case of **Dallialian v. Canada Employment and Immigration Commission** (1980), 33 N.R. 118 (S.C.C.), the headnote stated in part:

"Operation and effect - Repeal - Preservation of rights acquired under repealed statute - Interpretation Act, s. 35(c) - In July 1975 a man became entitled to a 51 week benefit period for unemployment insurance benefits - Effective January 1, 1976 the Unemployment Insurance Act was amended and under the Act as amended the man

did not qualify for benefits by reason of his age (he was over 65) - The Supreme Court of Canada held that the man's right to benefits continued after January 1, 1976 but that the man was not entitled to continue to receive benefits after becoming disqualified under the provisions of the repealed statute."

Search aid - MLB Key No. - **Statutes Topic 6903** is assigned to cases that consider the preservation of rights acquired under a repealed statute. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.6 Retroactive versus retrospective

In the case of **Johnstone v. Wright** (2002), 172 B.C.A.C. 6; 282 W.A.C. 6 (C.A.), the British Columbia Court of Appeal stated at paras. 6 and 7:

"[6] In **Gustavson Drilling (1964) Ltd. v. Minister of National Revenue**, [1977] 1 S.C.R. 271; 7 N.R. 401, Mr. Justice Dickson said this, for the majority, at p. 279 [S.C.R.]:

'First, retrospectivity. The general rule is that statutes are not to be construed as having retrospective operation unless such a construction is expressly or by necessary implication required by the language of the Act. An amending enactment may provide that it shall be deemed to have come into force on a date prior to its enactment or it may provide that it is to be operative with respect to transactions occurring prior to its enactment. In those instances the statute operates retrospectively.'

"[7] In 1977 there was no widespread judicial recognition of Mr. Driedger's careful distinction between retrospective operation and retroactive operation. So Mr. Justice Dickson distinguished between them in that passage ('to have come into force on a date prior to its enactment' means retroactive; and 'be operative with respect to transactions occurring prior to its enactment' means retrospective), but visited the same presumption equally on both, namely: that neither is to be construed as having either retrospective or retroactive operation unless such a construction is expressly or by necessary implication required by the language of the Act."

Search aid - MLB Key No. - **Statutes Topic 6703.1** is assigned to

cases that consider the distinction between retroactive and retrospective. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

3.7 Effect on matters in progress

In the case of **Canada Mortgage and Housing Corp. v. Hagblom, Hagblom, Canada Permanent Trust Co. and Wallace Construction Specialities Ltd.** (1983), 28 Sask.R. 31 (Q.B.), the court stated at para. 16:

"[16] Both counsel correctly set out the principles to be applied in the interpretation and construction of statutes as follows:

1. Statutes are presumed to be intended to apply to future acts and conditions and not to be retrospective unless a clear intention that the statute be retrospective appears by express words or by necessary and distinct implication;
2. A statute that affects vested rights is presumed not to be retrospective;
3. An exception to the rule that statutes are presumed not to be retrospective is in the case of statutes dealing with mere procedure which do not affect vested rights. 'Procedure' is used in a restricted sense and has to do with the method of prosecuting a right of action which exists, not with the taking away of a right of action which has arisen;
4. Where the law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

Search aid - MLB Key No. - **Statutes Topic 6745** is assigned to cases that consider the effect of a statute on matters in progress. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

Chapter 4 - Interpretation of Statutes

4.1 Introduction and the modern principle

The leading Canadian text on the interpretation of statutes is **Sullivan and Driedger on the Construction of Statutes** (4th Ed. 2002).

Elmer Driedger in the first edition of his text, in 1974, stated what he called the modern principle as follows:

"Today there is only one principle or approach, namely, the words of the 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."

The modern principle has been approved repeatedly by Canadian courts including the Supreme Court of Canada - see **Rizzo and Rizzo Shoes Ltd. (Bankrupt), Re**, [1998] 1 S.C.R. 27; 221 N.R. 241; 106 O.A.C. 1.

The elements of the modern principle are:

1. Textual meaning, the grammatical and ordinary sense of the words;
2. Legislative intent, including the scheme and object of the statute; and
3. Compliance with legal norms, including values found in the common law and in constitutional documents.

When an interpreter applies the elements of the modern principle to a statute, and the question is whether the statute applies to particular facts, the interpreter may be required to apply case law and the rules of interpretation that have been evolving for hundreds of years. For example, there are many general rules, plus rules regarding extrinsic aids, intrinsic aids, presumptions, etc., and there are rules found in statutes, such as, the Interpretation Acts, Regulation Acts, Statute Revision Acts, Official Languages Acts, etc.

After applying the rules of interpretation, a final question is whether the interpretation adopted is appropriate - see **Sullivan and Driedger on the Construction of Statutes** (4th Ed.), p. 3. This final inquiry determines:

- whether the interpretation adopted is plausible given the legislative

text;

- whether the interpretation adopted promotes the legislative intent;
and

- whether the interpretation adopted complies with legal norms, e.g. is it reasonable and just.

4.2 Interpretation, general

In the case of **Verdun v. Toronto-Dominion Bank** (1996), 203 N.R. 60; 94 O.A.C. 211 (S.C.C.), the headnote stated in part:

"Interpretation - General - The Supreme Court of Canada stated that 'the first step in a question of statutory interpretation is always an examination of the language of the statute itself' - See paragraph 22."

Search aid - MLB Key No. - **Statutes Topic 499** is assigned to cases that consider the general principles of interpretation. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.3 Interpretation, purpose of legislation

In the case of **R. v. Hill** (1975), 6 N.R. 413 (S.C.C.), the headnote stated in part:

"Interpretation - General principles - Purpose of legislation - Laskin, C.J.C., of the Supreme Court of Canada stated that judges cannot escape making a 'determination of purpose, or policy, regardless of the canon that is invoked; indeed, we make it when we purport to apply one canon rather than another' - See paragraph 57."

Search aid - MLB Key No. - **Statutes Topic 501** is assigned to cases that consider the duty of a court to promote the purpose of legislation. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.4 Interpretation, intention of legislature

In the case of **Minister of National Revenue v. Schwartz** (1996), 193 N.R. 241 (S.C.C.), the headnote stated:

"Interpretation - Intention of legislature - The Supreme Court of Canada stated that '... policy concerns ... should not and cannot be

relied on in disregard of Parliament's clearly expressed intention: "interpretatio cessat in claris" - See paragraph 50."

Search aid - MLB Key No. - **Statutes Topic 502** is assigned to cases that consider the determination of the intention of the legislature. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.5 Interpretation, avoidance of unreasonable results

In the case of **Cormier v. Board of School Trustees, District 19** (1974), 8 N.B.R.(2d) 330 (C.A.), the headnote stated in part:

"Interpretation - Avoidance of unreasonable results - The New Brunswick Court of Appeal stated that an interpretation of a statute which produces an unreasonable result should be rejected - See paragraph 15."

Search aid - MLB Key No. - **Statutes Topic 503** is assigned to cases that consider the avoidance of unreasonable results. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.6 Interpretation, sensible and not literal interpretation

In the case of **McMonagle v. Westminister (City)** (1990), 109 N.R. 209 (H.L.), the headnote stated in part:

"Interpretation - General principles - Sensible and not literal interpretation - The House of Lords considered the problem arising from excess wordage that has the effect of defeating the very purpose of the legislation - In certain instances the offending surplusage can be disregarded - Their Lordships stated that the 'presumption that every word in a statute must be given some effective meaning is a strong one, but the courts have on occasion been driven to disregard particular words or phrases when, by giving effect to them, the operation of the statute would be rendered insensible, absurd or ineffective to achieve its evident purpose.' - See paragraphs 11 to 13."

Search aid - MLB Key No. - **Statutes Topic 507** is assigned to cases that consider a sensible and not a literal interpretation. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.7 Interpretation, in accordance with reason and convenience

In the case of **Canadian Acceptance Corp. v. Mowatt** (1970), 2 N.B.R.(2d) 390 (Q.B.), the court stated at para. 26:

"[26] Craies on Statute Law, sixth edition, at p. 13, quotes Lord Hobart in **Sheffield v. Ratcliffe** (1616) Hob. 334-346, with reference to rules of interpretation by the courts as stating that statutes are interpreted 'by that liberty and authority which judges have over statute law according to reason and best convenience to mould them to the truest and best use'."

Search aid - MLB Key No. - **Statutes Topic 509** is assigned to cases that consider an interpretation in accordance with reason and convenience. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.8 Interpretation, ordinary meaning of words

In the case of **Canada Mortgage and Housing Corp. v. Hagblom, Hagblom, Canada Permanent Trust Co. and Wallace Construction Specialities Ltd.** (1998), 237 N.R. 373; 122 B.C.A.C. 1; 200 W.A.C. 1 (S.C.C.), the headnote stated:

"Interpretation - General principles - Ordinary meaning of words - The Supreme Court of Canada stated that 'statutory provisions should be read to give the words their most obvious ordinary meaning which accords with the context and purpose of the enactment in which they occur; ... It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids.' - See paragraph 14."

Search aid - MLB Key No. - **Statutes Topic 516** is assigned to cases that consider the ordinary meaning of words. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.9 Interpretation, conflict with other statutes

In the case of **Diamond Estate v. Robbins** (2006), 253 Nfld. & P.E.I.R. 16; 759 A.P.R. 16 (Nfld. C.A.), the headnote stated in part:

"Interpretation - Construction where meaning is not plain - General principles - Avoidance of conflict with other statutes - The

Newfoundland and Labrador Court of Appeal stated that 'in statutory interpretation there is a presumptive rule of coherence, i.e., that the legislature did not intend to enact inconsistent provisions in statutes dealing with the same subject matter. "As a result, where possible, potentially conflicting legislation is interpreted so that inconsistency or conflict is avoided". ... It follows that where provisions in separate statutes can apply without conflict both will apply. ... Where there is conflict, such that the provisions in separate statutes cannot both apply, other interpretative rules assist in the resolution thereof. One of these is reflected in the maxim *generalia specialibus non derogant* (a general provision does not derogate from a special one), also known as the rule of implied exception' - See paragraphs 49 to 51."

Search aid - MLB Key No. - **Statutes Topic 1409** is assigned to cases that consider a conflict with other statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.10 Interpretation, ambiguity defined

In the case of **Bell ExpressVu Limited Partnership v. Rex et al.** (2002), 287 N.R. 248; 166 B.C.A.C. 1; 271 W.A.C. 1 (S.C.C.), the headnote stated in part:

"Interpretation - Construction where meaning is not plain - General principles - Ambiguity - General - The Supreme Court of Canada stated that absent ambiguity, the words of a statute were to be interpreted in their ordinary and grammatical sense - Other principles of statutory interpretation, such as strict construction of penal statutes and the 'Charter values' presumption, applied only where there was ambiguity - Ambiguity occurred only where the words of a provision were 'reasonably capable of more than one meaning' - By necessity, the 'entire context' of a provision must be considered to determine whether the provision was reasonably capable of multiple interpretations - The court restated that 'it is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretative aids, including "other principles of interpretation"' - The court stated that 'ambiguity cannot reside in the mere fact that several courts -- or, for that matter, several doctrinal writers -- have come to differing conclusions on the interpretation of a given provision' - See paragraphs 28 to 30."

Search aid - MLB Key No. - **Statutes Topic 1414** is assigned to cases that consider what constitutes an ambiguity. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.11 Interpretation, aids, legislative history

In the case of **Canada 3000 Inc. (Bankrupt), Re** (2004), 183 O.A.C. 201 (C.A.), the headnote stated in part:

"Interpretation - Construction where meaning is not plain - Aids or methods to determine meaning - Legislative history - General - Parties filed an affidavit containing evidence concerning the legislative history of two statutes that were in issue - The Ontario Court of Appeal acknowledged that legislative history was admissible as an aid to statutory interpretation and opined that 'the legislative history of the enactments in issue and of the challenged statutory provisions was admissible without the necessity of sworn affidavit evidence.' - See paragraph 212."

Search aid - MLB Key No. - **Statutes Topic 1449** is assigned to cases that consider legislative history as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.12 Interpretation, aids, similar statutes

In the case of **British Columbia Development Corp. v. Ombudsman** (1984), 55 N.R. 298 (S.C.C.), the headnote stated in part:

"Interpretation - Extrinsic aids - Other statutes - Similar statutes in other jurisdictions - The Supreme Court of Canada in construing the B.C. Ombudsman Act considered the Ombudsman legislation in other provinces - See paragraph 70."

Search aid - MLB Key No. - **Statutes Topic 1626** is assigned to cases that consider statutes in other jurisdictions as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.13 Interpretation, aids, books and comments

In the case of **R. v. Lyons** (1984), 56 N.R. 6 (S.C.C.), the headnote stated in part:

"Interpretation - Extrinsic aids - Books and comments - General - The

Supreme Court of Canada, considered various academic authorities and commentaries on the electronic invasion of privacy in construing Part IV.1 of the Criminal Code, a mini-code on invasion of privacy - The material was considered with reference only to the aims of the legislating body and the evils with which it was then contending in passing Part IV.1 - See paragraphs 56 to 63."

Search aid - MLB Key No. - **Statutes Topic 1701** is assigned to cases that consider books and comments as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.14 Interpretation, aids, bilingual statutes

In the case of **Estabrooks Pontiac Buick Ltd., Re** (1982), 44 N.B.R.(2d) 201; 116 A.P.R. 201 (C.A.), the headnote stated in part:

"Interpretation - Intrinsic aids - Bilingual statutes - Reference to either language - The New Brunswick Court of Appeal examined both the English and French versions of a bilingual statute to determine the intention of the legislature, since both were equally authoritative, by virtue of the Official Languages of New Brunswick Act, R.S.N.B., 1973, c. O-1 - See paragraph 19."

Search aid - MLB Key No. - **Statutes Topic 1801** is assigned to cases that consider bilingual statutes as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.15 Interpretation, aids, punctuation

In the case of **Peters Transport Ltd. v. Motor Transport Board (Man.)** (1981), 17 Man.R.(2d) 368 (C.A.), the headnote stated in part:

"Interpretation - Intrinsic aids - Punctuation - General - The Manitoba Court of Appeal affirmed the approach to interpretation whereby regard must be given to punctuation but punctuation is to be subservient to the words and apparent intention of the legislation - See paragraphs 17 to 20."

Search aid - MLB Key No. - **Statutes Topic 1822** is assigned to cases that consider punctuation as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.16 Interpretation, aids, presumptions, general

Overview: In case of an ambiguity, the courts may invoke one or more of the many presumptions. In the sections that follow you will find only a sample of the presumptions that are available to an interpreter.

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In the case of **Beaulieu v. New Brunswick** (2003), 266 N.B.R.(2d) 338; 698 A.P.R. 338 (C.A.), the headnote stated in part:

"Interpretation - Presumptions and rules in aid - General - The New Brunswick Court of Appeal stated that 'that the presumptive canons of statutory interpretation are residual in scope. That is to say, they do not displace the court's obligation to apply Elmer Driedger's formulation of the modern and overarching principle of statutory interpretation ... If the meaning of a statutory provision is ambiguous and its meaning cannot be ascertained through the application of interpretative principles, then the presumptive or residual canons of construction come into play. As well, if the court is faced with choosing between two sensible interpretations, the one favouring the party in whose favour the presumption lies is to be preferred. However, if there is no ambiguity or if one of the two possible interpretations is not sensible, the presumptive canons have no application.' - See paragraphs 12 to 14."

Search aid - MLB Key No. - **Statutes Topic 2251** is assigned to cases that consider presumptions as an aid. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.17 Interpretation, aids, presumptions, against alteration of the law

In the case of **Hongkong Bank of Canada v. Wheeler Holdings Ltd.** (1990), 111 A.R. 42 (C.A.), the headnote stated in part:

"Interpretation - Presumptions in aid - Presumption against alteration of law - The Alberta Court of Appeal applied the presumption that the legislature does not intend to make any substantial alteration of law beyond what is explicitly declared (see paragraphs 21 and 22)."

Search aid - MLB Key No. - **Statutes Topic 2259** is assigned to cases that consider the presumption against alteration of the law. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

4.18 Interpretation, aids, presumptions, against abridgment of common law rights

In the case of **R. v. Jones** (1983), 43 A.R. 251 (C.A.), the headnote stated in part:

"Interpretation - Presumptions and rules in aid - Against abridgment of common law rights - The Alberta Court of Appeal held that the common law right of the pedestrian to use the highways could only be restricted by express statutory language, which must be strictly construed - See paragraph 8."

Search aid - MLB Key No. - **Statutes Topic 2262** is assigned to cases that consider the presumption against abridgement of common law rights. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

Chapter 5 - Remedial Statutes

5.1 Interpretation

In the case of **Employment Standards Officer v. Equitable Management Ltd.** (1990), 40 O.A.C. 384 (Div. Ct.), the headnote stated in part:

"Remedial statutes - General principles - Interpretation - The Ontario Divisional Court held that the Employment Standards Act, R.S.O. 1980, c. 132, as remedial legislation should be given a broad and liberal interpretation consistent with its true intent, meaning and spirit - See paragraph 10."

Search aid - MLB Key No. - **Statutes Topic 8506** is assigned to cases that consider the interpretation of remedial statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.

Chapter 6 - Penal Statutes

6.1 Interpretation

In the case of **R. v. Wust (L.W.)** (2000), 252 N.R. 332; 134 B.C.A.C. 236; 219 W.A.C. 236 (S.C.C.), the Supreme Court of Canada stated at para. 34:

"[34] In his judgment, Rosenberg, J.A., employed several well-established rules of statutory interpretation to conclude as he did, at p. 69, that s. 719(3) provides sentencing judges with a 'substantive power to count pre-sentence custody in fixing the length of the sentence'. I agree with his analysis. In particular, I approve of his reference to the principle that provisions in penal statutes, when ambiguous, should be interpreted in a manner favourable to the accused (see **R. v. McIntosh (B.B.)**, [1995] 1 S.C.R. 686; 178 N.R. 161; 79 O.A.C. 81; 95 C.C.C.(3d) 481; 36 C.R.(4th) 171, at para. 29, per Lamer, C.J.); to the need to interpret legislation so as to avoid conflict between its internal provisions, to avoid absurd results by searching for internal coherence and consistency in the statute; and finally, where a provision is capable of more than one interpretation, to choose the interpretation which is consistent with the **Charter: Davidson v. Slight Communications Inc.**, [1989] 1 S.C.R. 1038; 93 N.R. 183, at p. 1078 [S.C.R.], per Lamer, J. (as he then was)."

Search aid - MLB Key No. - **Statutes Topic 8410** is assigned to cases that consider the interpretation of penal statutes. See www.mlb.nb.ca and Appendix for a list of cases that dealt with this issue.