

Session 7: Statutory Interpretation: Essential(s) for Adjudicators

Moderator: Voy Stelmaszynski

Speaker: Professor Randal Graham, Faculty of Law - University of Western Ontario

While last year SOAR veteran Randal Graham spoke about the more broad questions of statutory interpretation such as personal bias and confronting legislative language, this year the focus was on advanced interpretative techniques for statutory interpretation with a view to making reasons more substantive and more compelling, or as a lawyer, to make stronger arguments.

Professor Graham discussed the maxims (or “rules”) of statutory construction and interpretation, and gave the audience a rundown of how and why the various rules are used: these tools encapsulate particular forms of argumentation, and each of the Latin maxims refers to its own particular pattern of language. The maxims can be used to resolve issues interpreting statutes. Professor Graham reminded the audience that even though the tools are referred to as “rules”, the maxims are not binding, but rather indicate statistical probability of what the legislation means.

Professor Graham raised two reasons that we maintain the Latin form of the maxims: the first (and bad!) reason is to terrify your less-linguistically savvy legal opponents. The second (and far more legitimate!) reason is that because each maxim is associated with a pattern of language, using the exact maxim in your case law search will turn up only those cases that have employed the reasoning expressed by the maxim.

Professor Graham then gave the audience an informative glance at the maxims included on his handy handout as follows:

Noscitur a sociis

The translation of *Noscitur a sociis* is “the immediate context rule” and, unsurprisingly, underlines the importance of context in statutory interpretation - where two or more words are associated together, they should take their meaning from one another. This rule is more colloquially known as “birds of a feather flock together”.

Professor Graham illustrated this maxim with an example of the inability of an insured bankrupt to collect proceeds in the event of “illness, disability or death”. Bankruptcy is a disability under law since you cannot hold office and are considered legally disabled. The *Noscitur a sociis* rule says that in spite of this, you could not collect insurance, since “disability” is flanked by “illness” and

“death”. In this context, it becomes clear that “disability” refers to a physical incapacity, as each word in the provision should take its colour from the other words in the provision.

R. v. Goulis (Ont. CA) was used as a more probing example of this maxim. In that case, Mr. Goulis was a bankrupt who was required by law to disclose his assets to the trustee in bankruptcy. He did not disclose that he had over 1000 pairs of shoes. He did not physically hide the shoes, he simply omitted to indicate their existence. Pursuant to section 350 of the *Criminal Code*, everyone who “removes, conceals or disposes of any of his property [with intent to defraud creditors] is guilty of an indictable offence”.

Professor Graham posed the question: While it is obvious that Mr. Goulis did not remove or dispose of his shoes, did he conceal them? An animated audience discussion ensued, resulting in a mixed verdict where participants took into consideration both the maxim *noscitur a sociis*, and the principle that ambiguities in criminal law should be resolved in the favour of the person facing the penalty (a similar concept to *contra proferentem* - resolving contractual disputes in favour of those who did not draft the contract).

In pari materia

The next maxim discussed was *in pari materia*, a rule that signals that the same terms found in different statutes or provisions that deal with the same subject matter should be interpreted similarly. Looking at the *Goulis* example above, if the *Bankruptcy Act* contained a definition of “conceal” that included passive acts of concealment, we could apply this in interpreting a section of the *Criminal Code* concerning bankruptcy, and find that Goulis did in fact conceal his shoes.

Section 15(2)(b) of *Federal Interpretation Act* is the statutory embodiment of this rule, and Professor Graham urged that the audience befriend this legislation. The *Legislation Act* of Ontario contains a similar provision that guides readers of statutes to interpret similar terms in different statutes similarly.

The basis for this rule of interpretation is that it should be assumed that the legislature has dealt with the subject matter consistently. However, this maxim will not be a reliable tool where examples of contrary intentions appear in the legislation.

Ejusdem generis

Where a list of specific items appears in legislation, *ejusdem generis* tells us that words of the same class, kind, or genus shall be interpreted narrowly. For example, the “other animals” in “lions tigers bears and other animals” should be interpreted narrowly as animals that share characteristics with lions tigers and

bears, and not just any animal - the “other animals” would be large and dangerous, and would probably not include a mouse or human.

To employ this maxim properly, you must explain why the maxim works the way it does - namely because of the principle that legislators do not add extraneous words, and would not have gone to the trouble of adding specific examples if there was no significance to them. The reader of the statute must thusly narrow the interpretation to avoid effectively repealing the list.

The case Professor Graham used to illustrate the concept was *US v. Alpers* (USSC), where Mr. Alpers was charged with selling obscene phonograph records. He admitted he was selling the records and admitted that they were obscene, but argued that the records did not fall under “other matters” in the legislation, which prohibited interstate shipment of any obscene “book, pamphlet, picture, motion picture film, paper, letter, writing, print, or other matter of indecent character”. Professor Graham prompted the audience to discuss whether they thought the phonograph records constituted “other matters”.

The anecdote for the *ejusdem generis* argument is that the terms may exhaust the genus, leaving no guidance as to the other kinds of things intended to be caught. In addition, an argument can be made that the legislature has not created a discernable class, or that the proponent should have defined the subject matter differently.

Reddendo singula singulis

Where multiple subjects and multiple objects are set out in a provision, the maxim *reddendo singula singulis*, or “referring each to each”, is a grammar-based rule that helps the reader sort out which subjects correspond to which objects. Mr Graham points out that this grammatical construction is generally only found in older legislation, but since legislation has no “sell-by” date, it is still encountered. For example, the phrase “men and women may become members of fraternities and sororities” is ambiguous as to how the terms should be matched. However, *reddendo singula singulis* implies that the subject “men” should be applied to the object “fraternities” since they are both first in the lists, and that “women” should be matched with “sororities” since these terms both come second. There may also be an implied distribution that can be leveraged (i.e. “frat” comes from brother), and context and social policies may assist your argument.

The case Professor Graham used as an example was *Bishop v. Deakin* (Eng. CA). The defendant had been elected as a “municipal councilor” in the United Kingdom. She had been convicted of perjury and sentenced to more than three months in prison two years before the election. The opposition party brought this fact to light and sought to remove the councilor from office eight months after the election. The relevant legislation said that “a person shall be disqualified from

being elected or being a member of a local authority if he ... has within five years before the day of election or since his election been convicted in the United Kingdom ... of any offence and ordered to be imprisoned for a period of no less than three months". There was a six month limitation period in play.

In this case, algebraically speaking, the Court decided that X = disqualified from being elected, A = disqualified from being a member, Y = within five years before the day of election and B = since his election. The Court found that because the councillor was already a member (A) that this should be matched with "since his election" (B). Since she hadn't been convicted since her election, she was allowed to remain in office.

Questions to consider when positing the *reddondo* construction are: If X doesn't match with B can A match with Y? Is there any reason that terms should be exclusively matched? Will this create a greater penalty than intended or run contrary to social policies?

Expression unius est exclusio alterius

The last maxim on the agenda was *expression unius est exclusio alterius*, or "the expression of one thing implies the exclusion of the other". For example, take a look at the following provisions: (1) "faculty, students and staff shall be governed by the dental plan", and (2), "university staff and students shall be covered by the medical plan". In this situation, the exclusion of "faculty" in (2) would indicate that since faculty were included in (1) the legislature expressly intended to exclude them in (2).