SULLIVAN ON THE CONSTRUCTION OF STATUTES

Sixth Edition

by

Ruth Sullivan

LexisNexis®

Associated Words

§8.58 ***The associated words rule (noscitur a sociis).***[92] The associated words rule is properly invoked when two or more terms linked by "and" or "or" serve an analogous grammatical and logical function within a provision. This parallelism invites the reader to look for a common feature among the terms. This feature is then relied on to resolve ambiguity or limit the scope of the terms. Often the terms are restricted to the scope of their broadest common denominator. As Martin J.A. explained in *R. v. Goulis*:

> When two or more words which are susceptible of analogous meanings are coupled together they are understood to be used in their cognate sense. They take their colour from each other, the meaning of the more general being restricted to a sense analogous to the less general.[93]

The question in the *Goulis* case was whether a bankrupt who failed to reveal the existence of certain commercial property to his trustee in bankruptcy had "concealed" the property within the meaning of s. 350 of the *Criminal Code*. It provided:

> 350. Every one who,
>
> (a) with intent to defraud his creditors,
>
> (i) makes or causes to be made a gift, conveyance, assignment, sale, transfer or delivery of his property, or
>
> (ii) removes, conceals or disposes of any of his property
>
> ...
>
> is guilty of an indictable offence....

Although the term "conceals" in subparagraph (ii) could be understood broadly to include a failure to disclose, Martin J.A. relied on the associated words principle to justify his adoption of a narrower meaning:

> In this case, the words which lend colour to the word "conceals" are, first, the word "removes", which clearly refers to a physical removal of property, and second, the words "disposes of", which, standing in contrast to the kind of disposition which is expressly dealt with in subpara. (i) of the same para. (*a*), namely, one which is made by "gift, conveyance, assignment, sale, transfer or delivery", strongly suggests the kind of disposition which results from a positive act taken by a person to physically part with his property.[94] In my view the association of "conceals" with the words "removes" or "disposes of" in s. 350(*a*)(ii) shows that the word "conceals" is there used by Parliament in a sense which contemplates a positive act of concealment.[95]

92 The maxims examined in this Part are referred to as "rules" only because they are part of the body of so-called statutory interpretation rules. As explained by Lord Reid in *Maunsell v. Olins*, [1975] A.C. 373 at 382 (H.L.), the rules of statutory interpretation "are not rules in the ordinary sense of having some binding force.... They are aids to construction, presumptions or pointers."

93 [1981] O.J. No. 637, 33 O.R. (2d) 55, at 61 (Ont. C.A.).

94 Martin J.A. here implicitly relies on the presumption against tautology, discussed above at §8.23*ff*.

Having identified the shared feature of the three linked words as a physical act of some sort, Martin J.A. then uses this feature to narrow the range of possible meanings of "conceal".

§8.59 In *Ontario v. Canadian Pacific Ltd.*,[96] the Supreme Court of Canada had to determine the validity of Ontario's *Environmental Protection Act*, an issue which turned in part on the Court's interpretation of the following provision.

> 13. (1) Notwithstanding any other provision of this Act or the regulations, no person shall deposit, add, emit or discharge a contaminant or cause or permit the deposit, addition, emission or discharge of a contaminant into the natural environment that,
>
> (*a*) causes or is likely to cause impairment of the quality of the natural environment for any use that can be made of it;
>
> (*b*) causes or is likely to cause injury or damage to property or to plant or animal life;
>
> (*c*) causes or is likely to cause harm or material discomfort to any person;
>
> (*d*) adversely affects or is likely to adversely affect the health of any person;
>
> (*e*) impairs or is likely to impair the safety of any person;
>
> (*f*) renders or is likely to render any property or plant or animal life unfit for use by man;
>
> (*g*) causes or is likely to cause loss of enjoyment of normal use of property; or
>
> (*h*) interferes or is likely to interfere with the normal conduct of business.

The issue was whether the prohibition set out in s. 13(1)(a) was unconstitutionally vague. In the view of the Court it was not. Gonthier J. wrote:

> As I observed in *Nova Scotia Pharmaceutical Society*,[97] ... legislative provisions must not be considered in a vacuum. The content of a provision "is enriched by the rest of the section in which it is found ....". Thus, it is significant that the expression challenged by CP as being vague ... appears in s. 13(1)(*a*) alongside various other environmental impacts which attract liability. It is apparent from these other enumerated impacts that the release of a contaminant which poses only a trivial or minimal threat to the environment is not prohibited by s. 13(1). Instead, the potential impact of a contaminant must have some significance in order for

95 *R. v. Goulis*, [1981] O.J. No. 637, 33 O.R. (2d) 55, at 61 (Ont. C.A.). See also *Opitz v. Wrzesnewskyj*, [2012] S.C.J. No. 55, 2012 SCC 55, at paras. 40-43 (S.C.C.); *R. v. Grant*, [2009] S.C.J. No. 32, 2009 SCC 32, [2009] 2 S.C.R. 353, at para. 144 (S.C.C.); *McDiarmid Lumber Ltd. v. God's Lake First Nation*, [2006] S.C.J. No. 58, 2006 SCC 58, [2006] 2 S.C.R. 846, at paras. 30-35 (S.C.C.); *Ontario (Ministry of Labour) v. Sheehan's Truck Centre Inc.*, [2011] O.J. No. 4510, 2011 ONCA 645, at para. 33 (Ont. C.A.); *R. v. Spencer*, [2011] S.J. No. 729, 2011 SKCA 144, at paras. 68-70 (Sask. C.A.); *Ted Leroy Trucking Ltd. v. British Columbia (Minister of Revenue)*, [2008] B.C.J. No. 1238, 2008 BCCA 285, at para. 22-23 (B.C.C.A.).

96 [1995] S.C.J. No. 62, [1995] 2 S.C.R. 1031 (S.C.C.).

97 *R. v. Nova Scotia Pharmaceutical Society*, [1992] S.C.J. No. 67, [1992] 2 S.C.R. 606, at 647-48 (S.C.C.).

s. 13(1) to be breached. The contaminant must have the potential to cause *injury or damage* to property or to plant or animal life (s. 13(1)(*b*)), cause *harm or material discomfort* (s. 13(1)(*c*)), *adversely affect* health (s. 13(1)(*d*)), *impair* safety (s. 13(1)(*e*)), render property or plant or animal life *unfit for use* by man (s. 13(1)(*f*)), cause *loss* of enjoyment of normal use of property (s. 13(1)(*g*)), or *interfere* with the normal conduct of business (s. 13(1)(*h*)). The choice of terms in s. 13(1) leads me to conclude that polluting conduct is only prohibited if it has the potential to impair a use of the natural environment in a manner which is more than trivial. Therefore, a citizen may not be convicted under s. 13(1)(*a*) EPA for releasing a contaminant which could have only a minimal impact on a "use" of the natural environment.[98]

[Emphasis in original]

Although the language of s. 13(1)(a) was vague and potentially quite broad, Gonthier J. relied on a shared feature of paragraphs (a) through (h) to narrow its scope.

§8.60 In *R. v. Daoust*,[99] the Supreme Court of Canada both relied on and rejected the associated words rule in interpreting s. 462.31 of the *Criminal Code*, introduced to address the evil of money laundering:

462.31(1) Every one commits an offence who *uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of* or otherwise deals with, in any manner and by any means, any property ... with intent to *conceal or convert* that property ..., knowing or believing that [it] was obtained ... as a result of the commission [of an enterprise offence]....

[Author's emphasis]

One issue before the Court was whether a person who purchases property described in the section can be said to "transfer the possession of" that property. The Court said no. Bastarache J. pointed out that each of the specific acts enumerated in the section, from "uses" to "disposes of", contemplates a person with control over property who gets rid of it in a unilateral way. The act of purchasing has no place in such a list. This, he noted, was an application of the *noscitur a sociis* rule.[100]

§8.61 A second issue before the Court was whether the intent to covert property referred to in the section requires an intent to disguise the property so as to conceal its criminal origins or render them undetectable. Again, the Court said no, this time refusing to apply the rule. Bastarache J. wrote:

It is true that the *noscitur a sociis* rule, which we applied earlier, allows us to determine the meaning of a term through its relation to other terms. However, this principle is normally applied when interpreting terms in an enumeration....

In the present case, the words "conceal" and "convert" are not part of a list. On the contrary they are two distinct terms with distinct meanings. This is demonstrated by Parliament's use of the expression "with intent to conceal or convert", as the use of the word "or" shows an intent to distinguish the two terms from each other. For this reason, these two terms should not be read together, and the *noscitur a sociis* rule does not apply.[101]

Although it is difficult to find a common denominator in a list of two, it is not impossible. Particularly if one of the words is vague, its association with a single precise word can be telling.[102]

§8.62 ***Rebuttal.*** While words must always be read in context, determining the impact of a given context on the meaning of a disputed word or phrase is a matter of judgment that must be exercised on a case by case basis, taking into account all relevant sources of legislative meaning. As Prowse J.A. remarked in *R. v. Two Young Men*:

When general and specific words are associated together, and where they are capable of analogous meaning, the general words should be restricted to their more specific analogous meaning, *noscitur a sociis*, except where doing so would be contrary to the clear intention of the statute as a whole.[103]

§8.63 The appropriate approach is well illustrated in the judgment of Cory J. in *R. v. McCraw*.[104] The accused was charged with the offence of threatening "to cause death or serious bodily harm to any person" under s. 264.1(1)(a) of the *Criminal Code*. It was argued that because the expression "serious bodily harm" is associated with the word "death" in this provision, the offence should be lim-

98 *Ontario v. Canadian Pacific Ltd.*, [1995] S.C.J. No. 62, [1995] 2 S.C.R. 1031, at para. 64 (S.C.C.). Compare the reasoning of Lamer C.J. at para. 20. See also *British Columbia (Workers' Compensation Board) v. Figliola*, [2011] S.C.J. No. 52, 2011 SCC 52, [2011] 3 S.C.R. 422, at paras. 39-41 (S.C.C.); *Marche v. Halifax Insurance Co.*, [2005] S.C.J. No. 7, [2005] 1 S.C.R. 47, at paras. 66-70 (S.C.C.); *Zimmer Canada Ltd. v. British Columbia*, [2010] B.C.J. No. 220, 2010 BCCA 64, at para. 27 (B.C.C.A.); *Ted Leroy Trucking Ltd. v. British Columbia (Minister of Revenue)*, [2008] B.C.J. No. 1238, 2008 BCCA 285, at paras. 22-23 (B.C.C.A.).

99 [2004] S.C.J. No. 7, [2004] 1 S.C.R. 217 (S.C.C.).

100 *Ibid.*, at para. 49, 51.

101 *Ibid.*, at paras. 60-61. Arguably, the non-application of the rule was not due to the use of "or" but rather to the failure of the two conjoined words to share a meaningful common denominator.

102 See the discussion of *R. v. Tremblay*, [1974] A.J. No. 158, 23 C.C.C. (2d) 179 (Alta. C.A.), below at §8.75.

103 [1979] A.J. No. 555, 101 D.L.R. (3d) 598, at 608 (Alta. C.A.). See *Mitchell v. Peguis Indian Band*, [1990] S.C.J. No. 63, [1990] 2 S.C.R. 85, at 123-24 (S.C.C.), where Dickson J., dissenting, refused to narrow the scope of "agreement" in s. 90(1) of the *Indian Act*, referring to "property that was ... given to ... a band under a treaty or agreement between a band and Her Majesty". At pp. 113-14, he wrote: "I can see no reason why the *ejusdem generis* rule of interpretation, assuming that it is applicable, should prevail over the *Nowegijick* principle of resolving ambiguities in favour of Indians." See also *R. v. Spencer*, [2011] S.J. No. 729, 2011 SKCA 144, at paras. 68-70 (Sask. C.A.), leave to appeal granted [2012] S.C.C.A. No. 73 (S.C.C.).

104 [1991] S.C.J. No. 69, [1991] 3 S.C.R. 72 (S.C.C.). See also *R. v. Huggins*, [2010] O.J. No. 4671, 2010 ONCA 746, at paras. 23-25 (Ont. C.A.); *R. v. Grant*, [2006] O.J. No. 2179, 213 O.A.C. 127, at paras. 73-77 (Ont. C.A.), vard [2009] S.C.J. No. 32 (S.C.C.).

ited to threats of harm that are similar in quality and seriousness to threats of death. However, this suggestion was inconsistent with the purpose of the provision, which was to preserve a secure environment in which individuals could move about freely without fear of harm. That purpose would be undermined by any serious threat, not just threats of death or near-death. The Court also noted that the threat of harm to persons in para. (a) must be read in the context of the entire provision which criminalized other types of threat as well: para. (b) dealt with threats to damage property, while para. (c) dealt with threats to harm pets or farm animals. The association with these less serious types of threat offset the reference to death in para. (a).

LIMITED CLASS

§8.64 The limited class rule (*ejusdem generis*). In *National Bank of Greece (Canada) v. Katsikonouris*, La Forest J. explained the limited class rule as follows:

> Whatever the particular document one is construing, when one finds a clause that sets out a list of specific words followed by a general term, it will normally be appropriate to limit the general term to the genus of the narrow enumeration that precedes it.[105]

The reasoning underlying this rule is explored in *Consumers' Association of Canada v. Canada (Postmaster General)*.[106] In that case the Consumers' Association sought to register its magazines as second-class mail. The issue was whether it was precluded from doing so by s. 11(1)(d)(i) of the *Post Office Act* which excluded publications of "a fraternal, trade, professional *or other association* or a trade union, credit union, cooperative, or local church organization ..." [author's emphasis]. In concluding that the Consumers' Association was not an "association" within the meaning of the provision, the court reasoned as follows:

> The rule of construction generally known as the "*ejusdem generis*" rule was cited by counsel for the Applicant as applicable to if not decisive in this case. This rule is designed to assist in ascertaining the true intention of Parliament and is often a thoroughly sound guide. Looking at all the terms in the paragraph which describe specific kinds of organization, all of which have meanings quite limited in scope, and particularly at the words "fraternal, trade, professional", we cannot think that Parliament meant, by simply adding the words "or other association", to bring every conceivable kind of association of human beings within the provisions of the paragraph. If that had been the intention of Parliament there would have been no need to spell out several specific kinds of associations. Words like "any kind of association whatever" would have been sufficient. Or, if it was thought desirable to name some specific associations, the addition of words like "or any other association, whether '*ejudsem generis*' with the foregoing or not" would have sufficed to make the intention clear.[107]

105 [1990] S.C.J. No. 95, [1990] 2 S.C.R. 1029, 74 D.L.R. (4th) 197, at 203 (S.C.C.). See also *A.L. Stuckless & Sons Ltd. v. Newfoundland and Labrador (Minister of Forest Resources and Agrifoods)*, [2005] N.J. No. 59, 244 Nfld. & P.E.I.R. 298, at paras. 83-84 (Nfld. C.A.).

106 [1975] F.C.J. No. 23, 11 N.R. 181 (F.C.A.); see also *Warren v. Chapman*, [1985] M.J. No. 117, [1985] 4 W.W.R. 75 (Man. C.A.).

As the Court clearly indicates, the inferences involved in applying the limited class rule are based on the assumption that legislatures do not use superfluous words; they express themselves as concisely as possible; and every word is there for a reason and has some work to do.

§8.65 In the *Consumers' Association* case, the effect of the rule was to narrow the scope of the word "association" which, considered apart from its context, would certainly have been broad enough to include the applicant association.[108] The limited class rule is also used to resolve ambiguity. In *Re Warren and Chapman*,[109] for example, the issue was whether a statement appearing in a newspaper article was a "representation" within the meaning of Manitoba's *Human Rights Act* which prohibited publishing "in a newspaper ... or by means of any other medium ... any notice, sign, symbol, emblem or other representation ... exposing or tending to expose a person to hatred". The court pointed out that the word "representation" has two distinct senses: it can refer to a verbal assertion that purports to give a true picture of a particular state of affairs; or alternatively it can refer to a visual image or sign. Relying on the limited class rule, the court in *Chapman* opted for the second possibility. Philp J.A. wrote:

> I agree with ... Morse J. ... that "the words 'notice, sign, symbol, emblem', as used in [the Act], constitute a genus or specific class". The use of the word "representation", in its sense as an image, likeness or reproduction, is consistent with the genus or specific class into which the other words fall.[110]

§8.66 *Conditions precedent for limited class argument.* For a limited class inference to arise several conditions must be present. First, there must be an identifiable class to which each item in the list of specific items belongs. Second, the class inferred from the list of specific items must be narrower in scope than the general words that follow the list. Finally, the class inferred from the list of specific items must have something, apart from those items, to apply to.

107 *Ibid.*, at 186-87. For similar reasoning see *Walker v. Ritchie*, [2006] S.C.J. No. 45, [2006] 2 S.C.R. 428, at para. 24 (S.C.C.); *R. v. Anderson*, [2009] P.E.I.J. No. 7, 2009 PECA 4, at para. 70 (P.E.I.C.A.); *Re Nelson Estate*, [1971] B.C.J. No. 198, [1972] 1 W.W.R. 313, at 315 (B.C.S.C.); and *Re Stockport Ragged, Industrial and Reformatory Schools*, [1898] 2 Ch. 687, at 696 (C.A.).

108 See also *Ermineskin Indian Band and Nation v. Canada*, [2009] S.C.J. No. 9, 2009 SCC 9, [2009] 1 S.C.R. 2, at paras. 106, 109 (S.C.C.); *Thomson Newspapers Co. v. Canada (Attorney General)*, [1998] S.C.J. No. 44, [1998] 1 S.C.R. 877, at para. 41 (S.C.C.); *Milner Power Inc. v. Alberta (Energy and Utilities Board)*, [2010] A.J. No. 866, 2010 ABCA 236, at paras. 42-43 (Alta. C.A.).

109 [1985] M.J. No. 117, [1985] 4 W.W.R. 75 (Man. C.A.).

110 *Ibid.*, at 80.