SULLIVAN ON THE CONSTRUCTION OF STATUTES

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by

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> Had Parliament wanted to declare that "other counsel" means only unpaid persons, it would have said so by using distinctive terms....[26]

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

§8.22 Reliance on this presumption is illustrated in the dissenting judgment of La Forest J. in *R. v. Finta*.[27] One of the issues facing the Court in *Finta* was whether s. 7(3.71) of the *Criminal Code* created an offence or merely extended the territorial jurisdiction of Canadian courts. The section provided that

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

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

> Parliament's intention to confine itself to a rule governing the application of offences is also evident from the position of s. 7(3.71) in the *Code*. It appears, I repeat, in Part I of the *Code*, which is appropriately titled "General". No offence is created in that Part. It deals, as its name implies, with interpretive matters, application, enforcement, defences and other general provisions. Offences are dealt with in other parts of the *Code*, and are usually entitled as such, among others "Part II. Offences Against Public Order", "Part VIII. Offences Against the Person and Reputation", "Part IX. Offences Against Rights of Property", and so on. One should assume some minimal level of ordering in an Act of Parliament. Had Parliament wished specifically to make war crimes and crimes against humanity domestic offences, it would have been much easier to do so directly, and I cannot imagine why it would have done so in the General Part of the *Code*.[28]

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26 *Ibid.*, at paras. 64-65. See also *R. v. Bouvier*, [2011] S.J. No. 463, 2011 SKCA 87, at para. 21 (Sask. C.A.); *Walsh v. Mobil Oil Canada*, [2008] A.J. No. 830, 2008 ABCA 268, at para. 75 (Alta. C.A.), *per* Ritter J.A.: "If the Legislature intended retaliation to have the same meaning as discrimination, it chose a strange way of expressing that intention. It would have been sufficient to merely list previous complaints as a prohibited ground of discrimination rather than setting up a separate subsection within the legislation to deal with the issue."

27 [1994] S.C.J. No. 26, [1994] 1 S.C.R. 701 (S.C.C.).

28 *R. v. Finta*, [1994] S.C.J. No. 26, [1994] 1 S.C.R. 701 at para. 35 (S.C.C.). See the dissenting judgment of L'Heureux-Dubé J. in *2747-3174 Québec Inc. v. Québec (Régie des permis d'alcool)*, [1996] S.C.J. No. 112, [1996] 3 S.C.R. 919, at paras. 201-204 (S.C.C.), where she relied on this presumption to conclude that the term "tribunal" in s. 23 of *Quebec's Charter of Human Rights and Freedoms* was limited to tribunals exercising penal jurisdiction. She wrote, at para. 202-203:

Although La Forest J. was dissenting, his analysis here is exemplary. In reaching its conclusion, the majority in *Finta* did not address this point.

THE PRESUMPTION AGAINST TAUTOLOGY

§8.23 ***Governing principle.*** It is presumed that the legislature avoids superfluous or meaningless words, that it does not pointlessly repeat itself or speak in vain.[29] Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose. In *Hill v. William Hill (Park Lane) Ltd.*, Viscount Simons wrote:

> [Al]though a Parliamentary enactment (like parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has already been said once, this repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before. The rule that a meaning should, if possible, be given to every word in the statute implies that, unless there is good reason to the contrary, the words add something which would not be there if the words were left out.[30]

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

> It is a well-accepted principle of statutory interpretation that no legislative provision should be interpreted so as to render it mere surplusage.[31]

As these passages indicate, every word and provision found in a statute is supposed to have a meaning and a function. For this reason courts should avoid, as much as possible, adopting interpretations that would render any portion of a statute meaningless or pointless or redundant.[32]

The rule of interpretation is as follows: if a provision that deals with both field A and field non-A is placed in a series of provisions dealing only with field A, this is contrary to the principles of sound legislative drafting. This rule of interpretation applies directly to the situation in the case at bar.

Section 23 is part of Chapter III of Part I of the Charter, which sets out 'Judicial Rights', including all guarantees of a penal or criminal nature: imprisonment, search and seizure, arrest, *habeas corpus*, presumption of innocence, etc. An interpretation of the term 'quasi-judicial' that covered both 'matters of penal significance' and 'non-penal' matters would, according to the above rule, be contrary to the principles of sound drafting, since there is no reference to the "non-penal" sphere in Chapter III of Part I of the Charter.

See also *R. v. Carvery*, [2012] N.S.J. No. 527, 2012 NSCA 107, at paras. 54*ff.* (N.S.C.A.), affd [2014] S.C.J. No. 27 (S.C.C.); *R. v. Bouvier*, [2011] S.J. No. 463, 2011 SKCA 87, at para. 21 (Sask. C.A.).

Quebec (Attorney General) v. Carrières Ste. Thérèse Ltée, [1985] S.C.J. No. 37, [1985] 1 S.C.R. 831, at 838 (S.C.C.).

[1949] A.C. 530, at 546 (H.L.).

[2000] S.C.J. No. 6, [2000] 1 S.C.R. 61, at para. 28 (S.C.C.).

See *Winters v. Legal Services Society*, [1999] S.C.J. No. 49, [1999] 3 S.C.R. 160, at para. 48 (S.C.C.): "The appellant's position would render [certain] words superfluous. This cannot have