

TENSIONS IN STATUTORY INTERPRETATION*

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I INTRODUCTION

There are several approaches to statutory interpretation. Continental jurists, under the initial influence of Savigny, have been more articulate about this than we have, in relation to both domestic statutes and international treaties¹. It is of interest to read what they have to say. We can detect the approaches of which they write in our own case-law, where they appear sometimes as approaches to interpretation, and sometimes as factors to be taken into account in the decision-making process. When all these approaches, or factors, point to the same conclusion, the case is an easy one. When they do not, the tension between them raises interesting questions as to which are the more dominant, and whether there is any judicial consistency in their application.

This essay will do two things. First, it will outline four approaches to interpretation (or, if one prefers, four factors which can influence the interpretation process) and secondly it will demonstrate briefly some of the possibilities for tension between them.

II FOUR APPROACHES TO INTERPRETATION

1. *The historical-subjective approach*

By this the continentals mean a style of interpretation which tries to ascertain the real intention of the framers of the statute. It is a style "by which the statute is interpreted according to the authentic intention of the historical legislator"².

Some say that in a modern parliamentary system this is a futile inquiry. The lawmaker is parliament, and the individual members of parliament may have had no common intention on the meaning or thrust of the document being enacted. However, this objection is overstated. The majority vote in the House legitimates what those responsible for framing the statute intended. The words of a statute do not appear on paper by chance: there is a guiding mind or minds behind them (be it a Law Reform Committee, Parliamentary Counsel, a minister, or members of a government department). It is not nonsense to ask what these minds intended by the provisions of the statute, or what they wanted them to convey.

Yet British courts have traditionally not used this approach. Such is the homage paid to sovereignty of parliament that our courts have very often stated the purpose of interpretation to be the discovery of "the intention of parliament"; yet their practice for centuries has been not to receive direct evidence of that intention, but to rely simply on the words of the statute itself.

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¹ For useful summaries see Bredimas, *Methods of Interpretation and Community Law* (1978); Kremnitzer (1986) 21 Israel L.R. 358.

² Kremnitzer, *supra* at 359.

What we must look for is the intention of parliament . . . But we can only take the intention of Parliament from the words which they have used in the Act.³

Whatever the people who framed the Act thought they were doing, the courts are concerned with the meaning of the legislature expressed in the language it has used.⁴

At times even the lip-service to intention has been dropped:

The general proposition that it is the duty of the court to find out the intention of Parliament — and not only of Parliament but of ministers also — cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used . . .⁵

This view led to the rigid exclusion of reference to parliamentary debates, explanatory notes to bills, and other documents arising in the course of the legislative process. It also explains the difficult rule that one can refer to committee reports recommending the legislation, but only to discover the mischief or background, and not as direct evidence of what the committee wanted the new legislation to mean.

The exclusion of direct evidence of intention in British courts, whatever the philosophy which lay behind it, applied (indeed still does apply) to private documents just as much as to statutes. Evidence of the actual intentions of the makers is generally inadmissible in the case of wills, deeds and contracts. What matters, as with statutes, is the final and considered form of words of the document in question: all else merges in that.

So courts in the British heritage have not in the past adhered to the historical-subjective approach, although they have paid frequent lip-service to "intention". The nearest they have really come was the principle, enunciated by Lord Esher⁶, that one must interpret an act as if one was reading it "the day after it was passed" — a recognition that one was at least interested in the meaning the historical legislators must have placed on their words.

That is the position as it currently stands in Britain; it was also the position as it stood in New Zealand until a short time ago. However, as is now well-known, New Zealand courts have recently rethought their position on this matter, and are now beginning to receive, and reason from, all the types of direct evidence which were previously excluded: parliamentary debates⁷, explanatory notes⁸, amendments to a Bill by select committee⁹, and committee reports¹⁰. Suddenly, therefore, a more vigorous historical-subjective approach has appeared in our law. So far it is probably true to say that consideration of such evidence has done little more than confirm conclusions already reached by other means, but at times that confirmation has been quite dramatic¹¹.

The inclination of the New Zealand courts to refer to this type of material raises interesting questions. Will this new stance be adopted in relation to

³ *Inland Revenue Commissioners v. Hinchy* [1960] A.C. 748 at 767 per Lord Reid.

⁴ *Jones v. Accident Compensation Commission* [1980] 2 N.Z.L.R. 379 at 382 per Casey J.

⁵ *Magor and St. Mellons R.D.C. v. Newport Corporation* [1952] A.C. 189 at 191 per Lord Simonds.

⁶ *Sharpe v. Wakefield* (1888) 22 Q.B. 239 at 242.

⁷ E.g. *Marac Life Assurance Ltd v. Commissioner of Inland Revenue* [1986] 1 N.Z.L.R. 694.

⁸ *Real Estate House (Broadtop) Ltd v. Real Estate Agents Licensing Board* [1987] 2 N.Z.L.R. 593.

⁹ *Brown & Doherty Construction Ltd v. Whangarei County Council* (1988) 2 N.Z.B.L.C. 103, 095.

¹⁰ E.g. *Worsdale v. Polglase* [1981] 1 N.Z.L.R. 722.

¹¹ See for example the *Brown & Doherty* case, supra n.9.

private documents as well? That is unlikely, for legislation, an instrument of governmental policy, raises very different considerations. There is still also a long way to go in settling what *kinds* of evidence of intention will be admissible: the furthest the courts have yet gone is to admit on the one hand submissions made to a parliamentary select committee¹², and on the other a post-act information bulletin by a government department¹³. There must surely be limits, dictated by reliability and accessibility. One also wonders what evidence of intent will be admissible in relation to regulations as opposed to acts of parliament. In 1933 the Court of Appeal unceremoniously rejected affidavits by government officials as to what the intended objects of regulations were¹⁴: would a similar view be taken today?

Concentration on the actual intention of the lawmaker is obviously no universal solvent. Very often the lawmakers will turn out to have had no discernible intention on the precise question before the court, simply because the exact combination of facts to which the statute now has to be applied never occurred to them. Often, therefore, reference to parliamentary materials will provide not so much evidence of intention, but rather background¹⁵, or evidence of the general purpose of the provision. As such it assists the teleological approach: there is a point at which “intention” and “purpose” merge. Moreover, reliance on an approach which asks solely what the original lawmakers intended can blind one to the function that the act ought to be performing today in circumstances which may well be different from those which pertained at its inception.

I do not think that the present-day scope [of the section] should be circumscribed by reference to the history of the legislation. Although the reasons for enacting it in the first place may have been relatively specific it seems to me that the view is well open that the provision has been retained in the same form on the basis that its wording remained relevant and appropriate to changed circumstances.

Legislation can, over a period of time, take on a life of its own and cease to be dependent on its origins.

2. *The objective or teleological approach*

Although there are varying versions of this approach¹⁷, the most common is that expressed in New Zealand in section 5(j) of the Acts Interpretation Act 1924: an act should be interpreted liberally to give effect to its purpose, or “according to its objective aim”¹⁸. It is commonly known as the purposive approach. This can perhaps be said to be the dominant approach in New Zealand at the moment.

Yet “purpose” is, in some respects, a nebulous concept. At least three situations should be distinguished. First, sometimes the interpreter can glean the overall purpose of a statute solely from within the four corners of the statute itself.

¹² *Ibid.*; see also *Wells v. Police* [1987] 2 N.Z.L.R. 560.

¹³ The *Marac Life* case, *supra* n.7.

¹⁴ *Carroll v. Attorney General* [1933] N.Z.L.R. 1461 at 1478 per Ostler J.; *Kerridge v. Girling Butcher* [1933] N.Z.L.R. 646 at 687 per Smith J.

¹⁵ See for example *Re Simpson* [1984] 1 N.Z.L.R. 738.

¹⁶ *Human Rights Commission v. Minister of Labour* [1984] 2 N.Z.L.R. 108 at 113 per Eichelbaum J.

¹⁷ See *Bredimas*, *supra* n.1, at 18.

¹⁸ *Kremnitzer*, *supra* n.1, at 359.

It may appear in the long title or a purpose section; or it may simply be gleaned from a reading of the statute as a whole. In such a case "theme" may be a more appropriate word than "purpose"; and the objective approach is little different from the *scheme of the act* approach to be discussed later. It means simply that each section of the statute must be read in a sense which best fits into the document's overall scheme.

Secondly, some "purposes" are not stated in as many words in the statute. They are rather the social and economic motivation for the legislation. For example when it is provided in the Traffic Regulations that a driver who causes damage to property must identify himself¹⁹, the purpose can be readily understood (although this is not expressly stated) to be the facilitation of allocation of loss. If such purposes cannot be deduced by common sense from the legislation, they may have to be discovered *ab extra*: from the circumstances surrounding the passing of the statute, from committee reports or, more recently, from a minister's speech in parliament. Here again "intention" and "purpose" can appear as shades of grey rather than as distinct concepts. Some acts have purposes of both the two kinds discussed. The purpose of the Property Speculation Tax Act 1973 was (i) to impose a tax on land speculation (the effect of its express provisions); (ii) to discourage such speculation (as stated expressly in its preamble); (iii) to check the inflation of land prices (as discoverable from the minister's speech in Hansard²⁰). Preambles, seldom found in modern statutes, had the advantage that they often stated the social and economic motivation of the legislation, rather than leaving it to deduction, research or (worse) guesswork.

Thirdly, there is the case where the overall purpose of the statute as a whole, if indeed it has such a purpose, casts no light on the meaning of one of its provisions. In such a case, the purposive approach requires the court to discern the purpose of that provision alone. If there is no helpful external evidence, as often there will not be, this injunction has a self referring aspect: the words of the section must be interpreted in the light of their purpose, but the only evidence of their purpose is the words of the section themselves. Yet the purposive approach is not entirely vacuous in such a situation. Common sense often enables the interpreter to discern the spirit of a provision, based on but transcending its words. At a mundane level, for instance, it has been held that the word "vehicle" in the provision of the Crimes Act 1961 dealing with conversion includes a road roller, because the purpose of the provision is to deter the misuse of appliances "whose very nature makes them a target for joyriders"²¹. The purpose is self-evident, although the words do not actually spell it out. The relationship between meaning and purpose could be the subject of extended study; so could the relationship between interpreting to further legislative purpose and interpreting to achieve a sensible result.

3. *The linguistic-literal approach*

This approach places its weight on the language and grammar of the provision under consideration. The question is not "what did the lawmakers intend?"; it is simply "what do the words of the statute mean?"

As explained, this has traditionally been a major emphasis of British courts.

¹⁹ Traffic Regulations 1975, reg.134; see *Aburn v. Police* [1964] N.Z.L.R. 435.
²⁰ N.Z.P.D. vol.383 (1973) p.1803.

²¹ *R v. Pratt* C.A. 9 March 1988, C.A. 311/87 at p.9 per McMullin J.

“The duty of the court is to interpret the words that the legislature has used. . . .”²²

In the flush of the purposive approach, and the new-found ability to refer to legislative history, one must firmly resist any tendency to undervalue the approach now under consideration. After all, it is the words of the statute which the court has to interpret, and one is entitled to assume that parliamentary counsel, skilled in the use of the language, mean what they say: any other assumption would make nonsense of any reasonable concept of communication. There is also a reliance aspect: statute users are entitled to rely, and order their conduct, on the clear meaning of the words of the provision. Many cases are still decided simply on the basis that the words of the statute have just one clear meaning.

The problem is that, historically, British courts used to interpret *so* literally that they brought the literal approach into disrepute. By concentrating on literal meaning to the exclusion of all else they could at times ignore part of the message. Thus, in the case of *Whiteley v. Chappell*²³ in 1868 it was held that the accused did not “impersonate a person entitled to vote” within the statute when he voted in the name of a deceased voter: a deceased person is not “entitled to vote”. This unimaginative decision, which effectively ignored the purpose of the statute, was justified in this way:²⁴

I regret that we are obliged to come to the conclusion that the offence charged was not proved. But it would be wrong to strain words to meet the justice of the present case, because it might involve a precedent, and lead to dangerous consequences in other cases.

This myopic approach was the result of two things: an exaggerated adherence to the view that words have only one proper meaning, and a failure to admit the importance of context. Sections, even subsections, were very often viewed in isolation from the surrounding provisions of the statute if they seemed clear as they stood²⁵.

These days the emphasis has greatly changed. Rather than a “literal” approach we have a “natural meaning” approach, by which we refer to the meaning the words bear when read in the context or scheme of the statute as a whole. The new approach differs from the old in that, while it still accords primacy to the words of the statute, it admits the influence of context on meaning, and allows for the infusion of a little common sense: it can make allowance for slips in drafting or the slightly inappropriate use of words. It is not clear that we should even regard this approach as being of a kind with the old literal approach: some of the continental writing has another name for it — the *systematic* approach²⁶.

We may, however, make one comment about any approach based on the “literal” or “natural” meaning of words. It echoes a point already made. There can, very occasionally, be ambiguity as to the *time* at which one is to assess the meaning of an expression: the time at which it was enacted, or the time at which it is being interpreted. In the case of an old statute this can sometimes (albeit rarely) make a difference, for meanings of words, and the conventions

²² The *Magor and St. Mellons* case, supra n.5.

²³ (1868) L.R. 4 QB 147.

²⁴ *Ibid.* at 149 per Hannen J.

²⁵ See for example *Vacher & Sons Ltd v. London Society of Compositors* [1913] A.C. 107 at 126 per Lord Shaw.

²⁶ See Kremnitzer, supra n.1, at 359.

of their use, can change with time. Lord Esher's principle would direct attention to "the day after it was passed" and directly links the literal approach with the historical-subjective. Section 5(d) of the Acts Interpretation Act 1924, providing that an act is deemed to be always speaking, would suggest the later time. This latter approach best protects the reliance of the ordinary reader, who is likely to take the expression in its current meaning at the time of reading, but accords less weight to the intentions of the original lawmakers. Bennion describes it as an "updating" approach²⁷, others as an "ambulatory" approach²⁸.

4. *Functional interpretation: the acceptable solution*

The continentals admit, as one of the versions of the teleological approach, something which goes beyond finding the legislative purpose, and allows weight to prevailing functional considerations such as the workability of the legislation. One of its more extreme variants was Gény's *sociological* theory of interpretation, in which the interpreting judge must be guided by the contemporary needs of society²⁹. In essence, the approach allows the interpreter to have regard to the most acceptable solution. Of all the approaches to interpretation this is the one which pays least homage to the sovereignty of parliament. The very phrase "acceptable solution" is of embarrassing breadth. Most importantly, it requires that, if possible, the interpretation placed upon legislation should accord with certain accepted values of our legal system. Examples of such values are the following: that individuals should not be deprived of access to the courts; that any hearing before a statutory tribunal should be conducted in accordance with the rules of natural justice; that statutes should not operate retrospectively if the effect of this would be to deprive an individual of substantive rights; that statutory powers should not be exercisable in such a way as unnecessarily to threaten personal liberty or property; that official powers should not threaten the confidentiality of solicitor-client communications.

The safeguards that exist in the modern lawmaking process should ensure that statutes which infringe these liberties are not passed in the first place³⁰. But some still exist which potentially do infringe them: they are normally given such a restrictive interpretation as will avoid their worst effects. This is not purposive interpretation in any sense: indeed it is almost the contrary, for the courts are limiting and controlling the parliamentary purpose rather than giving effect to it. Sir Robin Cooke has even gone so far as to say that if a statute were to be irreconcilable with basic values which lie deep in our system, the courts might refuse to recognise it as law at all³¹. While that goes a little far for many, it makes the point that what we are here concerned with are factors which operate *ab extra* to control the meaning given to legislation, and not factors which can be explained away as being based on the intention of the legislature. Nor can such interpretation be described as "literal": the restrictive interpretation accorded, say, to privative clauses is often distorted in the extreme.

²⁷ *Statutory Interpretation* (1984), 355.

²⁸ For example Lord Hodson in *National Dock Labour Board v. British Steel Corp.* [1973] 1 W.L.R. 89 at 102.

²⁹ See this approach summarised in Glover (1982) 1 *Canta* L.R. 385 at 389.

³⁰ See the report of the Legislation Advisory Committee, *Legislative Change* (1987).

³¹ Sir Robin's dicta are discussed by Caldwell [1984] N.Z.L.J. 357.

It would be interesting, if it were possible, to catalogue the values which our law regards as basic. One might find that the catalogue bore a striking resemblance to the draft Bill of Rights which has been proposed for New Zealand. Even if, as now appears likely, that Bill of Rights is not enacted in its present form, it will at least have served the purpose that it has made us aware of some of the assumptions which have in any event underpinned our system of common law and legislation for generations. These fundamental values can change with time too: the principles of the Treaty of Waitangi bid fair to become established ingredients in the list.

However, the “acceptable solution”, while it refers mainly to these values, is not confined to them. It refers to any factors external to the statute, and not directly related to the intention of the lawmakers, which constrain or slant its interpretation. Thus, it supports an interpretation of an old statute which makes it workable in the modern world. In no other way could the Sale of Goods Act, passed at a time when the typical sales transaction was the sale of a horse, cope in a society of pre-packaged, mass-produced goods³². It also persuades to an interpretation which is just and convenient rather than the reverse; and one which renders the statute in question as consistent as possible with existing common law, other statute law, and the country’s international obligations. It takes account of a subject’s history: no statute on criminal law, for example, can be read in isolation from the centuries of common-law and popular understanding which have shaped the subject³³.

All of these factors mould statute law into patterns of acceptability and consistency. They do not always have much to do with parliamentary intention or purpose, nor much to do with the natural meaning of words (although if the words as they stand are crystal clear and capable of only one meaning that must be the end of the matter).

5. Summary

In New Zealand (and English) law, these *approaches* to interpretation are perhaps best viewed as *factors* which may be present, and exert influence, in any case of statutory interpretation. Assuming that the old and the new versions of the linguistic-literal approach are different, we may say that interpretation involves a balancing of 5 factors: the intention of the lawmakers, the purpose of the legislation, the literal meaning of the words used, the context in which the words appear, and the most acceptable solution.

III THE TENSIONS

In some cases not all the factors are important: in some for instance, the literal meaning of the words alone resolves the issue. But in others all or some of the factors are important. If they reinforce each other and point to the same conclusion there is no difficulty, but if they do not, the resolution of the tension between them can involve a balancing act of considerable delicacy. It is proposed to select four cases where there has been tension between at least two of the factors, and examine the outcomes.

³² See *Ashington Piggeries Ltd v. Christopher Hill Ltd* [1972] A.C. 441 at 501 per Lord Diplock.

³³ See the famous statement by Windeyer J. in *Vallence v. R* (1961) 35 A.L.J.R. 182 at 191.

1. *Historical-subjective v. acceptable solution*

In *R v. Bolton, ex parte Beane*³⁴ the question was whether an Australian Defence Act permitted the detention in Australia of a non-Australian who had deserted from the United States forces in Vietnam several years before. The wording of the Act was conceded by the court to be ambiguous, and to provide no clear answer on the question. The High Court's inclination, relying on earlier authority, and emphasising that the question was one involving human freedom, was to answer the question "no". However it referred to the record of the parliamentary debates when the bill was passing through the House and found a passage in the second-reading speech of the Minister in the House of Representatives, which quite specifically indicated his view that the question should be answered "yes". Presumably that statement was present to the minds of the members of the House when casting their votes. This was a case where the literal meaning of the words was unhelpful, the court expressly stating that the relevant provision was "ambiguous"³⁵. Not much assistance was to be derived from a purposive approach either. The context of the Act lent some support to the court's view, for it significantly omitted any power for the service authority of the deserter's country to deal with him when handed over. But the major tension in this case was between the "acceptable solution" (the court mentioned several times that the liberty of the individual was at stake) and the direct evidence of the lawmaker's intention.

The majority of the High Court had little hesitation in resolving this tension by preferring its own view of the acceptable solution. The leading judgment of Mason C.J. and Wilson and Dawson J.J. contains the following passage:
³⁶

That speech [of the minister] quite unambiguously asserts that Part III relates to deserters and absentees whether or not they are from a visiting force. But this of itself, while deserving serious consideration, cannot be determinative; it is available as an aid to interpretation. The words of a Minister must not be substituted for the text of the law. Particularly is this so when the intention stated by the Minister but unexpressed in the law is restrictive of the liberty of the individual.

The judgment attempts to reconcile this result with traditional notions of sovereignty of parliament by stating that ³⁷

The words of a minister must not be substituted for the text of the law . . . The function of the court is to give effect to the will of parliament as expressed in the law.

In the light of the admitted ambiguity of the crucial section this explanation may be viewed as less than convincing.

The principal interest of the *Bolton* case is that it illustrates that the courts are not committed to a consistent theory that the function of interpretation is to discover the true intention of the lawmakers: in other words, their recent willingness to refer to Hansard does not commit them to the historical-subjective approach. Rather, the actual intention of the lawmakers is simply one factor to be weighed in the balance.

³⁴ (1986) 70 A.L.R. 225.

³⁵ *Ibid.* at 227.

³⁶ *Ibid.* at 227-228.

³⁷ *Ibid.* at 228.

2. *Historical-subjective v. linguistic-literal*

In *Dyson Holdings Ltd v. Fox*³⁸, the Rent Restriction Act 1920 (U.K.) gave security of tenure to a member of a deceased tenant's family who was residing with him at the time of his death. The question was whether a de facto spouse came within the expression "member of the family". If the correct approach is to ask what the lawmakers of 1920 intended by the word "family" Lord Esher's test of interpreting the legislation as if one were reading it the day after it was passed would surely have led to the conclusion that a de facto spouse was not a family member. That indeed was the conclusion of the English Court of Appeal in a 1950 decision, *Gammans v. Ekins*³⁹. However in the *Dyson* case in 1975 the Court of Appeal took a bold new line, and refused to follow the 1950 decision. This was done simply on the basis that in the intervening years the social acceptance of the de facto relationship had effectively led to a change in the connotation of the word "family". The court said that one must give that word its plain and ordinary meaning *at the time of decision*: in other words the act must be deemed to be always speaking, and what matters is what it conveys to a reader *now*.

According to Bridge L.J.:⁴⁰

[I]f language can change its meaning to accord with changing social attitudes, then a decision on the meaning of a word in a statute before such a change should not continue to bind thereafter, at all events in a case where the courts have consistently affirmed that the word is to be understood in its ordinary accepted meaning.

And to James L.J.:⁴¹

The word family must be given its popular meaning at the time relevant to the decision in the particular case.

This, then, is literal approach in its ambulatory aspect.

Later courts have not been totally accepting of *Dyson* because of its novel approach to precedent, but also, more importantly, because it is difficult to reconcile with any sensible application of an "intention of the lawmaker" approach: "In order to find out what Parliament intended by the statute, you must ascertain what the words of the statute meant when Parliament used those words."⁴²

The case's principal interest in the present discussion lies in this tension between the two approaches to the problem. But it is cause for reflection in other ways too. The recognition of a de facto relationship for any legal purpose is a matter which has substantial policy implications. One wonders whether such a change in the law would not have been best undertaken by the legislature itself.

3. *Linguistic-literal v. acceptable solution*

There are a number of cases like *Ex parte Connor*⁴³, but it is as good

³⁸ [1976] Q.B. 503.

³⁹ [1950] 2 K.B. 328.

⁴⁰ [1976] Q.B. 503 at 513.

⁴¹ *Ibid.* at 512.

⁴² *Helby v. Rafferty* [1979] 1 W.L.R. 13 at 16 per Stamp L.J. See also *Joram Developments Ltd v. Sharratt* [1979] 1 W.L.R. 3.

⁴³ [1981] Q.B. 758.

an illustration as any. Section 24 of the Social Security Act 1975 read as follows:

A woman who has been widowed shall be entitled to a widow's allowance at the weekly rate specified in relation thereto in Schedule 4, Part I, paragraph 5, if — (a) she was under pensionable age at the time when her late husband died . . . and (b) her late husband satisfied the contribution condition for a widow's allowance.

The Act provided for other kinds of benefit as well. Some of them were expressly declared to be subject to various forms of disentitlement; for example the unemployment benefit was subject to an exception where a person was unemployed through his own misconduct. No express form of disentitlement was specified in the case of the widow's allowance.

In *Connor's* case a widow who applied for the statutory widow's allowance had been convicted of the manslaughter of her husband. Lord Lane C.J. held that this disqualified her from claiming the allowance, by virtue of the principle that no person may take advantage of his or her own fault. It matters little whether one describes this as a value of the legal system or (perhaps a little more aptly) as a principle of public policy. What is clear is that the decision arrived at by the court was the only acceptable solution. Yet a purely literal approach would not have led to this conclusion, for the words of the section contained no trace of any such qualification. And the context of the act as a whole pointed, if anything, in the opposite direction: other benefits were subject to express disentitlements, this one was not. The case appears to be one where the "acceptable solution" prevailed over the literal approach. A qualification was, as it were, imposed *ab extra* on clear words; the case takes us to the very limits of the interpretative function, and some may argue that it does not truly involve "interpretation" or "construction" at all⁴⁴. Nor is it readily explicable in terms of intention of the lawmaker, although Lord Lane C.J. does say this:⁴⁵

The fact that there is no specific mention in the Act of the disentitlement so far as the widow is concerned . . . is merely an indication, as I see it, that the draftsman realised perfectly well that he was drawing his Act against the background of the law as it stood at the time.

4. *Linguistic-literal v. objective*

Very often the objective, or purposive, approach involves a court in giving secondary, or extended, meanings to the words of a provision so that that provision can best fulfil the purpose of the statute. But there is only so far that words will stretch, and sometimes a court has to conclude that, whatever the purpose of a statute and however desirable of fulfilment that purpose may be, the words in which the relevant provision is couched are not capable of the interpretation the court is being asked to put on them.

If we find language used which is incapable of a meaning,⁴⁶ we cannot supply one . . . We can do no more than give such a meaning as the words authorise.

*R v. MacDonagh*⁴⁷ is a case in point. The accused, who had been disqualified

⁴⁴ Is it perhaps akin to the rule of equity that a statute must not be used as an instrument of fraud?

⁴⁵ [1981] Q.B. 758 at 765.

⁴⁶ *Green v. Wood* (1845) 7 Q.B. 178 at 185 per Lord Denman.

⁴⁷ [1974] Q.B. 448.

from driving, was seen physically pushing to the curb a car whose engine was not running. He was charged with “driving” a vehicle while disqualified. It was held that the word “drive” was simply not apt to cover the activity in which the accused was engaged. However wide the purpose of the legislation may have been, and however desirable of attainment, the words the legislature had chosen did not admit of the interpretation put forward by the Crown.

Lord Widgery C.J. said:⁴⁸

Although the word “drive” must be given a wide meaning, the courts must be alert to see that the net is not thrown so widely that it includes activities which cannot be said to be driving a motor vehicle in any ordinary use of that word in the English language.

However the lines are not easy to draw. The influence of a strong purpose can at times lead courts to give words meanings which are at the very least odd. Lord Wilberforce once gave these examples:⁴⁹

[A]s case follows case . . . the meaning of the word gradually diverges from its natural or ordinary meaning. This is certainly true of “plant”. No ordinary man, literate or semi-literate, would think that a horse, a swimming pool, moveable partitions or even a dry dock was plant — yet each of them has been held to be so.

IV CONCLUSION

The styles of interpretation referred to by continental writers translate into our system rather as factors to be considered in the interpretation process. Empirical research over a great number of decisions might reveal a priority order between the factors, but that is unlikely. Which of the factors prevail in a particular case depends on an assessment of their relevant strengths on the facts: different minds may reach different results on this. Nevertheless there have been movements over time. Whereas in times past the linguistic-literal approach was undoubtedly pre-eminent, in more recent times increasing weight has been given to purpose and context: the “purposive approach” to interpretation has been attaining gradual dominance. Serious direct reference to the lawmaker’s intention (the historical-subjective approach) is of much more recent origin; to date it has tended to be confirmatory rather than decisive. The “acceptable solution” approach, long present in the shape of the various presumptions of interpretation, can, on the few occasions when it stands in opposition to the other factors, have quite dramatic effect: it did so in the examples of *R v. Bolton*, *ex parte Beane* and *ex parte Connor*. In such cases the courts exercise a control which ensures that, except in the most intractable cases, acts of parliament will not be given interpretations inimical to the traditions and history of our legal system.

Nevertheless, when all is said and done what is being interpreted is the *language* parliament has chosen to use. That fact, coupled with our doctrine of sovereignty of parliament, means that if the words of the provision in question are crystal clear in relation to the facts of the case that will displace all other factors. Yet even that is not a simple proposition, for those other factors themselves have an influence in determining whether the words *are* crystal clear.

Statutory interpretation is no simple process. Section 5(j) of the Acts Interpretation Act 1924, expressing New Zealand’s “cardinal rule” of interpretation, is by no means the whole story.

⁴⁸ *Ibid.* at 451.

⁴⁹ *Inland Revenue Commissioners v. Scottish and Newcastle Breweries* [1982] 1 W.L.R. 322 at 324.