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Sullivan and Driedger on the Construction of Statutes

Fourth Edition

by

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CHAPTER 1

Driedger's Modern Principle

ANALYSIS OF MODERN PRINCIPLE

Introduction. More than twenty-five years ago, in the first edition of the *Construction of Statutes*, Elmer Driedger described an approach to the interpretation of statutes which he called the modern principle:

Today there is only one principle or approach, namely, the words of an 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.¹

The modern principle has been cited and relied on in innumerable decisions of Canadian courts, and in *Re Rizzo and Rizzo Shoes Ltd.* it was declared to be the preferred approach of the Supreme Court of Canada.²

The chief significance of the modern principle is its insistence on the complex, multi-dimensional character of statutory interpretation. The first dimension emphasized is textual meaning. Although texts issue from an author and a particular set of circumstances, once published they are detached from their origin and take on a life of their own — one over which the reader has substantial control. Recent research in psycholinguistics has shown that the way readers understand the words of a text depends on the expectations they bring to their reading. These expectations are rooted in linguistic competence and shared linguistic convention; they are also dependent on the wide-ranging knowledge, beliefs, values and experience that readers have stored in their brain. The content of a reader's memory constitutes the most important context in which a text is read and influences in particular his or her impression of ordinary meaning — what Driedger calls the grammatical and ordinary sense of the words.

A second dimension endorsed by the modern principle is legislative intent. All texts, indeed all utterances, are made for a reason. Authors want to communicate their thoughts and they may further want their readers to adopt different views or adjust their conduct. A cooperative reader tries to discover what the

¹ Elmer A. Driedger, *The Construction of Statutes* (Toronto: Butterworths, 1974), at p. 67. [1998] 1 S.C.R. 27, at 41. See also *Bell ExpressVu Limited Partnership v. Rex*, [2002] SCC 42 and the cases cited at para. 26. The *Rizzo* case is discussed *infra* at pp. 10-11.