In this regard I find helpful the comments of M. D. Templeton ... on this point:[13]

> The grammatical structure of subsection 20(14) is similar to a number of other provisions in the Act in which Parliament lists the income tax consequences that arise when certain preconditions are met. Usually, the preconditions are set out in an introductory paragraph or paragraphs and the consequences in separate subparagraphs. We do not know of any canon of statutory interpretation that makes a tax consequence listed in the text of a provision subject to the taxpayer's compliance with all the other tax consequences listed before it.
>
> To carry this observation further, where specific provisions of the *Income Tax Act* intend to make the tax consequences for one party conditional on the acts or position of another party, the sections are drafted so that this interdependence is clear; see, *e.g.*, ss. 68, 69(5), 70(2), (3) and (5).[14]

The persuasiveness of an argument in this form turns on the interpreter's ability to provide convincing examples illustrating the claimed drafting practice.

Overview. In Part 1 of the this chapter, presumptions about how legislation is drafted are examined under the following headings: (1) presumed knowledge (2) presumed competence; (2) the presumption against tautology; (3) the presumption of consistent expression; (5) presumed coherence and internal consistency. Part 2 illustrates how these presumptions are used in textual analysis, including the standard Latin maxims *noscitur a sociis* (associated words), *ejusdem generis* (limited class) and *expressio unius est exclusio alterius* (implied exclusion).

PART 1. PRESUMPTIONS ABOUT HOW LEGISLATION IS DRAFTED

PRESUMED KNOWLEDGE AND COMPETENCE

Presumed knowledge of everything. The legislature is presumed to know all that is necessary to produce rational and effective legislation. This presumption is very far-reaching. It credits the legislature with a vast body of knowledge, including knowledge of legislative facts and of adjudicative facts of which judicial notice may be taken[15] as well as anything contained in briefs or reports tabled in the legislature.[16] The legislature is presumed to have a mastery of existing law, both common law and statute law, as well as the case law interpreting statutes.[17] It is also presumed to have knowledge of practical affairs. It understands the nature and functioning of judicial and executive institutions, for example, and is familiar with the problems its legislation is meant to address. In short, the legislature is presumed to know whatever facts are relevant to the conception and operation of its legislation.

The presumption of knowledge is not often discussed by the courts but is implicit in the interpretive rules and techniques on which they rely. For example, a mastery of language is presupposed by the ordinary meaning rule while knowledge of practical affairs is presupposed by purposive analysis and in some cases by the golden rule. A knowledge of law is presupposed by the presumption that the legislature does not intend to change existing law or to violate international law.

Logically, the substance of what the legislature is presumed to know must be knowledge that was available to it at the time the legislation was enacted. The legislature is not presumed to know the future. To determine the mischief at which a statute was aimed, for example, the courts look to material conditions existing at the time of enactment.

Presumed linguistic and drafting competence. The courts also presume that the legislature is a skillful crafter of legislative schemes and provisions and that legislation has been drafted in accordance with standard drafting conventions. Thus, the schemes are coherent and effective; the provisions are straightforward, exact, grammatically correct, concise and consistent. Although ordinary speakers or writers require much co-operative guesswork from their audience, a legislature is an idealized speaker. Unlike the rest of us, legislatures say what they mean and mean what they say. They do not make mistakes. In *Dillon v. Catelli Food Products Ltd.*, Ridell J.A. wrote:

> The modern principle is to credit the legislators with knowing what they intend to enact into law, and with a knowledge of the English language which enabled them to express their meaning.[18]

In *Spillers Ltd. v. Cardiff Borough Assessment Committee*, Lord Hewart said:

> It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily.[19]

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13 See M.D. Templeton, "Subsection 20(14) and the Allocation of Interest -- Buyers Beware" (1990), 38 Can. Tax J. 85, at pp. 87-88.

14 [1994] 2 S.C.R. 312, at 332.

15 In *Willick v. Willick*, [1994] 3 S.C.R. 670, L'Heureux-Dubé J. wrote, at 699: "An integral aspect of discovering Parliamentary intention is the precept that Parliament must be taken to be aware of the social and historical context in which it makes its intention known."

16 For discussion of the use of legislative history in interpretation, see *infra*, Chapter 19, at pp. 481ff.

17 In *2747 – 3174 Québec Inc. v. Quebec (Régie des Permis d'alcool)*, [1996] 3 S.C.R. 919, *per* L'Heureux-Dubé J. wrote, at para. 238: "It must be presumed that the Quebec legislature had knowledge of all the relevant law."

18 [1937] O.R. 114, at 176 (C.A.).

19 [1931] 2 K.B. 21, at 43.

** Preliminary Version **

Case Name:

ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)

City of Calgary, appellant/respondent on cross-appeal;
v.
ATCO Gas and Pipelines Ltd., respondent/appellant on cross-appeal, and
Alberta Energy and Utilities Board, Ontario Energy Board, Enbridge Gas Distribution Inc. and Union Gas Limited, interveners.

[2006] S.C.J. No. 4

2006 SCC 4

File No.: 30247.

Supreme Court of Canada

Heard: May 11, 2005;
Judgment: February 9, 2006.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish and Charron JJ.

(149 paras.)

Appeal From:

ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA

Subsequent History:

NOTE: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports.

Catchwords:

Administrative law -- Boards and tribunals -- Regulatory boards -- Jurisdiction -- Doctrine of jurisdiction by necessary implication -- Natural gas public utility applying to Alberta Energy and Utilities Board to approve sale of buildings and land no longer required in supplying natural gas -- Board approving sale subject to condition that portion of sale pro-

necessary implication is at the heart of the City's second argument. I cannot accept either of these arguments which are, in my view, diametrically contrary to the state of the law. This is revealed when we scrutinize the entire context which I will now endeavour to do.

53 After a brief review of a few historical facts, I will probe into the main function of the Board, rate setting, and I will then explore the incidental powers which can be derived from the context.

2.3.3.1 *Historical Background and Broader Context*

54 The history of public utilities regulation in Alberta originated with the creation in 1915 of the Board of Public Utility Commissioners by *The Public Utilities Act*, S.A. 1915, c. 6. This statute was based on similar American legislation: H. R. Milner, "Public Utility Rate Control in Alberta" (1930), 8 *Can. Bar Rev.* 101, at p. 101. While the American jurisprudence and texts in this area should be considered with caution given that Canada and the United States have very different political and constitutional-legal regimes, they do shed some light on the issue.

55 Pursuant to *The Public Utilities Act*, the first public utility board was established as a three-member tribunal to provide general supervision of all public utilities (s. 21), to investigate rates (s. 23), to make orders regarding equipment (s. 24), and to require every public utility to file with it complete schedules of rates (s. 23). Of interest for our purposes, the 1915 statute also required public utilities to obtain the approval of the Board of Public Utility Commissioners before selling any property when outside the ordinary course of their business (s. 29(g)).

56 The Alberta Energy and Utilities Board was created in February 1995 by the amalgamation of the Energy Resources Conservation Board and the Public Utilities Board (see Canadian Institute of Resources Law, *Canada Energy Law Service: Alberta* (loose-leaf ed.), at p. 30-3101). Since then, all matters under the jurisdiction of the Energy Resources Conservation Board and the Public Utilities Board have been handled by the Alberta Energy and Utilities Board and are within its exclusive jurisdiction. The Board has all of the powers, rights and privileges of its two predecessor boards (AEUBA, ss. 13, 15(1); GUA, s. 59).

57 In addition to the powers found in the 1915 statute, which have remained virtually the same in the present PUBA , the Board now benefits from the following express powers to:

1. make an order respecting the improvement of the service or commodity (PUBA, s. 80(b))
2. approve the issue by the public utility of shares, stocks, bonds and other evidences of indebtedness (GUA, s. 26(2)(a)); PUBA, s. 101(2)(a));
3. approve the lease, mortgage, disposition or encumbrance of the public utility's property, franchises, privileges or rights (GUA, s. 26(2)(d)(i); PUBA, s. 101(2)(d)(i));
4. approve the merger or consolidation of the public utility's property, franchises, privileges or rights (GUA, s. 26(2)(d)(ii); PUBA, s. 101(2)(d)(ii)); and
5. authorize the sale or permit to be made on the public utility's book a transfer of any share of its capital stock to a corporation that would result in the vesting in that corporation of more than 50% of the outstanding capital stock of the owner of the public utility (GUA, 27(1); PUBA, s. 102(1)).

58 It goes without saying that public utilities are very limited in the actions they can take, as evidenced from the above list. Nowhere is there a mention of the authority to allocate proceeds from a sale or the discretion of the Board to interfere with ownership rights.

59 Even in 1995 when the legislature decided to form the Alberta Energy and Utilities Board, it did not see fit to modify the PUBA or the GUA to provide the new Board with the power to allocate the proceeds of a sale even though the controversy surrounding this issue was full-blown (see, e.g., *Alberta Government Telephones* (1984), Alta. P.U.B. Decision No. E84081; *TransAlta Utilities Corp.* (1984), Alta. P.U.B. Decision No. E84116). It is a well-established principle that the legislature is **presumed** to have a mastery of **existing law**, both common law and statute law (see Sullivan, at pp. 154-55). It is also presumed to have known all of the circumstances surrounding the adoption of new legislation.

60 Although the Board may seem to possess a variety of powers and functions, it is manifest from a reading of the AEUBA, the PUBA and the GUA that the principal function of the Board in respect of public utilities is the determination of rates. Its power to supervise the finances of these companies and their operations, although wide, is in practice incidental to fixing rates (see Milner, at p. 102; Brown, at p. 2-16.6). Estey J., speaking for the majority of this Court in *Atco Ltd.*, at p. 576, echoed this view when he said: