

## Interpreting taxing Statutes # 28 – Regard to be had to consequences

When considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, the court should assess the likely consequences of adopting each construction, both to the parties concerned and (where similar facts arise in future cases) for the law generally.<sup>1</sup>

### SYNOPSIS

Practical outcome

Displacement of presumption of grammatical meaning

Evaluation of outcome of opposing construction

Consequence for the law generally

Settling of ambiguities

### Practical outcome

The consequences of a construction are to be taken into account, as the part of the process of interpretation. A statute cannot be interpreted according to its literal meaning without testing that meaning against the **practical outcome** of giving effect to it. Said as follows:

“It sometimes helps to assess the merits of a decision, if one starts by noticing its **results** and only after doing that allots to it the legal principles upon which it is said to depend.”<sup>2</sup>

### Displacement of presumption of grammatical meaning

There is a presumption in favour of the grammatical meaning of words used in an enactment. If the consequences are adverse, this presumption may be displaced. Said as follows:

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<sup>1</sup> Bennion 2020 s 11.6

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“Our task, as I see it, is to construe the Act, and in so doing the prima facie rule is that words have their ordinary meaning. But that is subject to the qualification that if, giving words their ordinary meaning, we are faced with extraordinary results which cannot have been intended by Parliament, we then have to move on to a second stage in which we re-examine the words.”<sup>3</sup>

### **Evaluation of outcome of opposing construction**

The court is usually concerned to decide between opposing construction of the enactment which are advanced by the parties in relations to the facts of the instant case. The results of adopting each of the constructions needs to be assessed. Said as follows:

“It seems to us that on the language of the section neither the view of the defendant nor that of the plaintiff can be said to be obviously wrong. The court, then, when faced with two possible constructions of legislative language, is entitled to look at the results of adopting each of the alternatives respectively in its quest for the true intention of Parliament.”<sup>4</sup>

### **Consequences for the law generally**

In judging consequences, it is important to distinguish consequences to the parties in the instant case and consequences for the law generally. It will usually be a straight forward matter to determine the effect on the court’s final order of a finding in favour of one possible construction rather than the other. But the court must also bear in mind that under the doctrine of precedent its decision may be of binding, or at least persuasive, authority for future cases. So, before reaching any decision on a new point

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<sup>2</sup> ICI Ltd v Shatwell (1965) AC 656 cited in Bennion 2020 p 410

<sup>3</sup> Re British Concrete Pipe Association’s Agreement (1968) AC 553 cited in Bennion 2020 p 411

<sup>4</sup> Fry v Inland Revenue Commissioners (1959) Ch 86 cited in Bennion 2020 p 411

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of principle the court must carefully weigh its future effect on the law.<sup>5</sup>

**Where an official is interposed to reduce ill-effect** - The court may be less unwilling to adopt an ‘adverse’ construction where some official is interposed whose discretion may be so exercised as to reduce the practical ill-effects.<sup>6</sup>

**Adverse and beneficent consequences** - Since the consequences to be borne in mind are often of a wide variety it is not surprising that they may tend in both directions. Each of the opposing construction may involve some adverse and some beneficent consequences. This aspect calls for a nice balancing by the court of the relevant factors. Moreover, they are to be weighed not in any narrow juristic sense, but from the viewpoint of the community at large.<sup>7</sup>

### Settling of ambiguities

As always when considering the interpretative criteria, the ultimate questions, in consequential construction as elsewhere, are related to the settling of ambiguity and the problem of strained construction. Where the enactment is grammatically ambiguous, assessment, of the consequences of each of the opposing constructions may certainly help to fix the meaning one way or the other. Said as follows:

“It is always proper to construe ambiguous word in the light of the reasonableness of the consequences.”<sup>8</sup>

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<sup>5</sup> Bennion 2020 p 411

<sup>6</sup> Bennion 2020 p 411

<sup>7</sup> Bennion 2020 p 412

<sup>8</sup> Gartside v IRC (1968) AC 553 cited in Bennion 2020 p 412

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Where the result of a grammatical construction is sufficiently ‘adverse’, reference to the consequences of that construction may indicate a decision in favour of strained constructions.<sup>9</sup>

### **Giving effect to beneficent consequences**

There is a tendency to concentrate attention on adverse consequences, but it needs to be remembered that a court may be strongly influenced the other way. If a consequence is clearly desirable, the court will wish to give effect to it.<sup>10</sup>

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<sup>9</sup> Bennion 2020 p 412

<sup>10</sup> Bennion 2020 p 413

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