

Interpreting Taxing Statutes # 102 – External aids

In construing an Act, an interpreter should consider all admissible external aids to construction, including the state of the law before the Act was passed, any report or other material that indicates the Act's purpose, and the Act's legislative history. [Ben 24.1]

SYNOPSIS

A wide range of external aids to construction may potentially shed light on the meaning of the words used in an Act. These include the previous state of the law, official reports, proceedings on a Bill, explanatory notes, later commentaries, etc.

The courts have traditionally been caution about relying on external aids to construction, especially material relating to the passage of a Bill through the legislature. Subject to continuing restrictions on the use of parliamentary material, the courts tend these days to allow most external aids to be used.

In principle, an interpreter can never be too well informed. However, there is a tension between the need to give effect to the intention of the legislature from whatever source it may be gleaned and the need for legal certainty. [R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd [2001] 2 AC 349] The need for legal certainty points towards citizens being able to rely on the legislative text itself, without having to search for external material that may affect how the text is interpreted. While recognising this basic goal, the court have generally found ways account of relevant extraneous material, at least for the limited purposes of determining the background to legislation or the mischief at which it is aimed.

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Use of extraneous material as direct evidence of the intended meaning of the words used in an enactment is more controversial.

Shifting trends in statutory interpretation and differing judicial attitudes mean that the compromise between these competing considerations has been struck in different places at different times and to some extent by different judges. Concerns about the need for citizens to be able to rely on the text have sometime prompted the courts to reject the use of external aids except in cases of doubt, although a consistent approach is not always apparent.

Three related issues dominate the case law on external aids:

- (1) whether material is admissible;
- (2) if it is admissible, the purpose for which it may be used;  
and
- (3) the weight to be given to material that is admitted.

Over time the courts have shown an increasing readiness to adopt a flexible approach, admitting wider categories of material, while paying greater attention to the weight or importance to attach to it.