

Interpreting Taxing Statutes # 25 – Presumption of ideal, rational legislature

SYNOPSIS

Concept of ideal legislature

Presumption that the legislature intends to act reasonably

Presumption that legislature has been competently drafted

Concept of ideal legislature

The concept, nourished by the courts, is of Legislature as an ideal body, incapable of error. One cannot assume a mistake in an Act of Parliament.^{^1} As substantiated by a classic English case:

“Whatever the real facts may be I think that a court of law is bound to proceed on the assumption that the legislature in an ideal person that does not make mistakes.”^{^2}

The concept serves a purpose, useful if it is not misunderstood. It promotes social stability and public respect for the law. It also encourages the courts to respect the legislature and its commands, and to strive to render them effective. An ‘ideal’ legislature never promulgates a meaningless enactment. Even if the court finds difficulty in attributing a meaning to the words used, it will strive to reach one. In such cases, the court will strive for a meaning that achieves the purpose of the enactment.

The concept may be articulated as a presumption that the legislature is a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner. As held in an English case:

¹ Richards v McBride (1881) 8 QBD 119 cited in Bennion 2020 p 395

² Income Tax Special Purposes Commissioners v Pemsel (1891) AC 531 cited in Bennion 2020 p 395

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“When courts identify the intension of Parliament, they do so assuming Parliament to be a rational and informed body pursuing the identifiable purpose of the legislation it enacts in a coherent and principled manner. That assumption shows appropriate respect for Parliament, enables Parliament most effectively to achieve its purposes and promotes the integrity of the law. In essence, the court interpret the language of a statue or statutory instrument as having the meaning which best explain why a rational and informed legislature would have acted as Parliament has. Attributing to Parliament an error or oversight is therefore an interpretation to be adopted only as a last resort.”<sup>3</sup>

### **Presumption that the legislature intends to act reasonably**

In an English case it was rightly said:

“One is entitled and indeed bound to assume that the Parliament intends to act reasonably, and therefore to prefer a reasonable interpretation of a statutory provision if there is any choice.”<sup>4</sup>

The presumption is of course to be used as a guide to ascertaining what the legislature intended. It is not a license to qualify every enactment by reference to reasonableness - the wording of the enactment may of course demonstrate that what some may regard as an unreasonable result was intended.<sup>5</sup>

### **Presumption that legislature has been competently drafted**

The presumption means, amongst other things, that the accepted principles of language, grammar, syntax and punctuation are to be taken as having been observed, and that legislation is assumed

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<sup>3</sup> R (on the application of N) v Walsall Metropolitan Borough council (2014) EWHC 1918 cited in Bennion 2020 p 395

<sup>4</sup> Inland Revenue Commissioners v Hinchy (1960) AC 748 cited in Bennion 2020 p 396

<sup>5</sup> Bennion 2020 p 396

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to have been produced with sufficient knowledge of the relevant law.⁶

The court prefers a construction which flows from a reading based on correct drafting rather than one based on an assumption of error. As held in an English case:

“It ought to be the rule and we are glad to say that it is rule that words are used in Act of Parliament correctly and exactly and not loosely and inexactly. Upon those who assert that the rule has been broken, the burden of establishing their proposition lies heavily.”⁷

⁶ Bennion 2020 p 396

⁷Spillers Ltd v Cardiff Assessment Committee and Pritchard (1931) 2 KB 21 cited in Bennion 2020 p 397