

Extract from the 5th edition of *BENNION ON STATUTORY INTERPRETATION*
Published by LexisNexis 2008

Appendix B

Checklist of interpretative criteria

The following is offered as a checklist for use when resolving a problem of statutory interpretation. To locate the description of a particular item consult the Index.

Preliminary questions

- What is the relevant enactment?
- Is the enactment in a consolidation Act?
- Is the enactment in a codifying Act?
- Does the enactment extend to the territory in question?
- Does the enactment apply to the person or matter in question?
- Does the doctrine of Crown immunity apply?
- Has the enactment come into force?
- Has the enactment been expressly or impliedly repealed?
- Has the enactment expired?
- Has the enactment ceased in practice to be enforced?
- Has the enactment been expressly or impliedly amended?
- Is the enactment the subject of an extra-statutory concession?
- Is the enactment subject to transitional provisions?
- Is the enactment retrospective?
- Is there any doubt as to the validity of the enactment?
- Is the drafting precise or disorganised?
- Have sub-rules been produced by judicial or other processing?
- What is the statutory or judicial factual outline?
- What are the material facts of your case?
- What is the legal thrust of the enactment?
- Does the doubt concern the factual outline, or the legal thrust, or both?
- Is the doubt 'real'?
- What was the legislator's purpose or object?
- What was the legislator's motive?
- What was the legislator's intention?
- Is the enactment grammatically ambiguous in relation to the facts?
- Is there semantic obscurity, and if so what is the 'corrected version'?
- Does the enactment require a strained construction?
- What are the opposing constructions of the enactment?

Possible guides to legal meaning of the enactment

The juridical nature of the enactment.

Surrounding information required for an *informed* interpretation (subject to need to minimise unpredictability and lengthening of proceedings), including: pre-enacting history, enacting history, post-enacting history.

Implications arising from the express words of the enactment.

The 'plain' meaning of the enactment (if it has one).

The rule that, where there is no 'plain' meaning, the legal meaning is to be ascertained by weighing and balancing the relevant interpretative factors as they apply to the opposing constructions of the enactment.

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Common sense.

A descriptive component (such as a sidenote or heading) of the Act or instrument containing the enactment.

A rule or definition laid down by the Interpretation Act 1978 or some other statutory provision.

Legal (or public) policy.

The principle against doubtful penalisation.

Rules as to standard of proof (whether civil or criminal) and the burden of proof.

The principle that law should serve the public interest.

The principle that law should be just.

The principle that law should not operate retrospectively.

The principle that law should be certain and predictable.

The principle that law should be coherent and self-consistent.

The principle that law should not be subject to casual change.

The principle that the common law is said to be in a favoured position in relation to statute law.

The principle that municipal law should conform to public international law.

The presumption that the text is intended to be the primary indication of legislative intention.

The presumption that an Act is normally intended to be given its literal meaning.

The presumption that the court is intended to have regard to the respective consequences of the opposing constructions.

The presumption that the court is intended to apply the remedy provided for the 'mischief'.

The presumption that the court is intended to apply a purposive construction.

The presumption that the court is intended to rectify drafting errors where this is required to carry out the overall legislative intention.

The presumption that the court is intended to avoid an unworkable or impractical result.

The presumption that the court is intended to avoid an inconvenient result.

The presumption that the court is intended to avoid an anomalous or illogical result.

The presumption that the court is intended to avoid a futile or pointless result.

The presumption that the court is intended to avoid an artificial result.

The presumption that the court is intended to avoid creating a disproportionate counter-mischief.

The presumption that the court is intended to adopt a construction that will not permit evasion of the enactment.

The presumption that the court is intended to apply ancillary rules and maxims of law, and have regard to implications arising from them.

The presumption that the court is intended to apply an updating construction where this is required to carry out the legislative intention.

The maxim *cessante ratione legis, cessat ipsa lex*.

The maxim *communis error facit jus*.

The canon that an enactment is to be construed by use of deductive reasoning.

The canon that an Act or other instrument is to be read as a whole.

The canon that each word is to be given a meaning (subject to the possibility that it is inserted *ex abundanti cautela*).

The canon that the same words are to be given the same meaning.

The canon that different words are to be given different meanings.

The maxim *generalibus specialia derogant*.

The maxim *generalia specialibus non derogant*.

The *noscitur a sociis* principle.

The *eiusdem generis* principle.

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The rank principle.

The *reddendo singula singulis* principle.

The maxim *expressum facit cessare tacitum*.

The *expressio unius* principle.

Other linguistic canons, such as those relating to technical terms.