Purposive Approach to Charter Interpretation

The "purposive approach" is a method used by judges to interpret what statutes (or laws) mean. The purposive approach requires a court to look at the purpose of the statute, and Parliament's (or a legislature's) intention when they created the statute, as well as the words written in the statute itself. The words must be interpreted in the broader context of the statute itself.[1]

There are various methods for interpreting statutes.[2] However, the purposive approach is especially important to Canadian constitutional law because the Supreme Court of Canada has held that the proper approach to giving meaning to *Charter* rights is through the "purposive approach".[3]

The *Charter of Rights and Freedoms*[4] is part of Canada's Constitution. When the *Charter* first came into effect, it was not clear how broadly and comprehensively the rights and freedoms in it would be interpreted. It was the responsibility of the courts to give meaning to each right and freedom on a case by case basis.

The purposive approach recognizes that the *Charter's* purpose is to guarantee and protect the rights contained within it, as well as to limit government activity that is inconsistent with those rights.[5]

When the courts use the purposive approach in *Charter* interpretation, they must first determine the purpose of the right in question (or what the right is meant to protect[6]). Once a court identifies what the right protects, the court must then determine what activity is protected under the right, and what activity is not. [7] For example, in the early *Charter* case of *Hunter v Southam*, the Supreme Court had to define what an "unreasonable" search or seizure was.[8] Since the *Charter* was a brand new document when this case was decided (in 1984), the Court had to figure out what the word "unreasonable" should mean within the context of the *Charter*. They had to do this without any previous *Charter* cases to rely on.

The purpose of a right must be determined while keeping in mind the overall objectives of the *Charter* itself. [9] A court can find meaning for a right from:

- The wording used in the section containing the right in question;
- The historical origins of the right;
- Its relation to the purpose of other rights associated with it.[10]

Purposive interpretation is not an exact science. But it is to be broad and generous "… aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the *Charter's* protection".[11] However, while it is necessary to give a broad and generous interpretation to the rights, it is important not to overshoot the actual purpose of

the right or freedom. To avoid overly expansive definitions, courts must interpret the purpose of a right within its appropriate linguistic, philosophical, and historical contexts.[12]

As more cases are decided, the definitions of rights become developed further. The more development, the more settled the definitions become.[13] The *Charter* came into effect in 1982. At that time, courts frequently had to determine what each *Charter* right was meant to protect. Today, the courts can use the definitions established in previous cases to help guide their decisions on current *Charter* cases. But they continue to use a purposive approach for their interpretation, as appropriate, especially when they encounter new facts and situations.

When interpreting the *Charter*, it must be remembered that the *Constitution* (and the *Charter*) is a "living tree" that is capable of growth and evolution. As such, interpretations of the rights and freedoms in the *Charter* are capable of growth and development in order to reflect the evolving social realities that the drafters of the *Charter* could not have imagined.[14] In other words, rights are not "frozen for eternity".[15] Therefore, when a court interprets the meaning of a right or a freedom, that meaning will organically change and evolve as necessary. Courts will use previous decisions and definitions to guide their interpretation of rights and freedoms. But those established definitions do not prevent the rights from evolving further. That is in large part because the courts use a purposive approach to interpretation.

For example, the right to receive Medical Assistance in Dying was not found to be protected under the right to life, liberty, and security of the person[16] in 1993,[17] but was found to be so in 2015.[18] Additionally, the right to strike was not included under the freedom of association[19] until 2015.[20] The purposive approach to constitutional interpretation permits judges to adapt to new problems and contexts, including those which may have been unforeseen when the *Charter* was first created.

[1] Elmer A Driedger, *Construction of Statutes*, 2nd ed (Toronto: Butterworths, 1983) at 87, cited in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27, 154 DLR (4th) 193 at para 21.

[2] An in-depth discussion of methodologies in statutory interpretation is beyond the scope of this Key Term. For a discussion of a couple different approaches to determining a statute's purpose, purposivism (discussed in this Key Term) and textualism, see: Mark Mancini, "On Canadian Statutory Interpretation and Recent Trends", *Double Aspect* (20 July 2020), online: <https://doubleaspect.blog/2020/07/20/on-canadian-statutory-interpretation-and-recent-trends/>.

[3] *R v Big M Drug Mart Ltd*, [1985] 1 SCR 295, 18 DLR (4th) 321 at para 116 ; While it is beyond the scope of this Key Term, it is important to note that courts and scholars have asserted that interpreting the Constitution is different than interpreting statutes. However, the approach has been argued to be similar. In any case, the purposive approach (or "modern" approach) for interpreting laws generally does share similarities with the

purposive approach as applied to constitutional interpretation. For a detailed discussion of this point, see: St*éphane Beaulac, "Chapter 41. Constitutional Interpretation. On Issues of Ontology and Interlegality" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, The Oxford Handbook of the Canadian Constitution (New York: Oxford University Press, 2017) 867.*

[4] *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being schedule B to the *Canada Act 1982* (UK), c 11 .

[5] *Hunter et al v Southam Inc*, [1984] 2 SCR 145 at 156, 11 DLR (4th) 641 .

[6] *Big M*, *supra* note 2 at para 116.

[7] Peter W Hogg, "Interpreting the Charter of Rights: Generosity and Justification" (1990) 4:28 Osgoode Hall LJ 817 at 820 [Hogg].

[8] *Hunter v Southam*, *supra* note 4 at 154; See also *Charter*, *supra* note 3 s 8.

[9] *Big M*, *supra* note 2 at para 117.

[10] *Ibid*.

[11] *Ibid*.

[12] *Ibid*.

[13] Hogg, *supra* note 6 at 820.

[14] *Hunter v Southam*, *supra* note 4 at 155.

[15] *Southam Inc v Canada (Combines Investigation, Director)*, 147 DLR (3d) 420, 1983 ABCA 32 (CanLii) at para 14.

[16] *Charter*, *supra* note 3 s 7.

[17] *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, 107 DLR (4th) 342.

[18] *Carter v Canada (Attorney General)*, 2015 SCC 5.

[19] *Charter*, *supra* note 3 s 2(d).

[20] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4.