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.


[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


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


[10] Ibid.


[12] Ibid.


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


