The Key Statement Expressed In The Case Of Project Blue Sky V Australian Broadcasting

Authority (1998) 194 CLR 395 reads that “[The] duty of a court is to give the words of a [1: Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 395] statutory provision the meaning that the legislature is taken to have intended them to have. Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose of the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning.”[footnoteRef:2]. This statement articulates that the modern approach to [2: Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 395] statutory interpretation has shifted from the old approach of literalism to the purposive approach where statutes are interpreted no longer by their literal meanings of their words but by their purpose and intentions that they were meant to serve. This purposive approach is indeed the best approach to interpretation and should be maintained due to the flexibility and discretion it offers compared to other approaches of interpretation such as literalism and the golden rule.

What is the purposive approach?

The purposive approach is the idea that a statute should be interpreted according to its 'purpose' as opposed to the plain meaning of the words as used historically. As stated by the court in the case of CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384[footnoteRef:3] [3: CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384]

“[T]he modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses ‘context’ in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy”[footnoteRef:4]. In determining the [4: CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384] purpose of a statute, the court may accept extrinsic material to help ascertain parliaments intentions such as explanatory memoranda, the reading speeches, law commission reports as they may assist by giving context and sometimes indicate purpose. The theory behind the purposive approach comes from the view that when the legislative wrote the law, they lacked the time and the foresight necessary to predict every possible situation to which a statute might be applied and thus comes a need to consider the purpose of the statute.

Shift from literal to purposive

In Tobias Lonnquist’s journal 'The Trends towards Purposive Statutory Interpretation:

Human Rights at Stake'[footnoteRef:5], it describes that there is a clear movement away from the literal [5: Tobias Lonnquist, ‘The Trends towards Purposive Statutory Interpretation: Human Rights at Stake’ [2003] 13 Revenue Law, 18] approach towards the purposive approach where

the modern interpretation of statutes seek to promote and advance the purpose of legislation rather than frustrate or defeat it. This is further reinforced in 1981 with section 15AA of the Acts Interpretation Act 1901 (Cth) [6] setting the purposive approach as standard with the statute reading “In the [6: Acts Interpretation Act 1901 (Cth) s15(a)(a)] interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.”[footnoteRef:7]. [7: Acts Interpretation Act 1901 (Cth) s15(a)(a)]

With this statute, the courts are legally obliged to provide an interpretation that would attain the best outcome and purpose of the statute.

According to the journal by Kate Tokeley, “Trends in Statutory Interpretation and the Judicial Process'[8], It has been found that the modern courts are concerned with assessing [8: Kate Tokeley, ‘Trends in Statutory interpretation and the judicial process’ (2002) 33(3&4) Victoria University of Wellington Law Review 545] the natural and ordinary meaning of that word in the context of the act rather than the dictionary usage of the word.

Limitations of the purposive approach

The purposive approach is not without its flaws and limitations. Firstly, there is considerable difficulty in determining a single purpose of a statute as the parliamentary intention behind the statutes was made by a collective mental state. The legislative is made up of 226 members and it is implausible where all 226 members with different opinions and positions can come to a single conclusion or agreement. Continuing further is the fact that parliament is divided on party lines and that finding the purpose of a statute will not always assist in interpreting a statute as outlined in the case of Carr v Western Australia (2007) 232 CLR 138[footnoteRef:9] [9: Carr v Western Australia (2007) 232 CLR 138] where it was stated “legislation rarely pursues a single purpose at all costs”[footnoteRef:10] but may have [10: Carr v Western Australia (2007) 232 CLR 138] many purposes. Even with the aid of extrinsic material it can be both costly and time-consuming. Secondly there are issues regarding separation of power as judges infringe on the duties of the legislative as they are given the power to make changes to the acts via “reading in” or “reading out”.

Furthermore, there are limitations of where the purposive approach can be relevant such as in cases where there is ambiguity or where there is uncertainty and not when the meaning of the statutory words is unambiguous. Other limitations include that the purposive approach “should only be used to employ a meaning that the words of the statute are reasonably capable of bearing”[footnoteRef:11] as to attach a meaning to a word that is not open is not [11: Kate Tokeley, ‘Trends in Statutory interpretation and the judicial process’ (2002) 33(3&4) Victoria University of Wellington Law Review 545] statutory interpretation but rather amendment of the law. However these limits are put in place to ensure that the separation of powers are maintained by stopping judges from creating the law instead of applying and interpreting the law.

Is the Purposive approach the best approach and should it be maintained?

The purposive approach has considerable advantages compared to other approaches such as

literalism and the golden rule. The key advantage that the purposive approach offers is flexibility as it has a broad approach, allowing the law to cover more perspectives than simply applying the words literally and thus leading to more fair outcomes in individual cases while allowing judges to cope with unforeseen situations by parliament, such as development in modern society. However, its application is only limited to situations where there is uncertainty and as mentioned before it is quite difficult to determine purpose leading to circumstances where the purposive approach should not be used if the legislative has failed to state that intentions in the provisions. Further, the purposive approach gives effect to the statutory purpose and thus legislatives intentions while enabling them to respect legislative sovereignty.

The use of literalism or where the 'correct' meaning of a statute is based on the ordinary meaning of the words in the provision has certain advantages such as giving the law more certainty as the law will be interpreted exactly the way it is written and that the separation of powers is respected with judges applying the law as it was written by Parliament amendment, however, there are distinct disadvantages with such an approach. Applying a literal approach to statutes in a way that is rigid will produce outcomes that are inconvenient, unjust, and outright absurd. Also the literal approach assumes that the statute is perfectly written without any mistakes or errors and ignores the fact It is not always possible to write a statute to cover every possible situation the legislative intended. The technique of literalism is defective as it results in not meeting the objectives of statutory interpretation.

Another approach to be considered is the “golden rule” where stated in the case of Grey v Peterson (1857) 6 HLC 61[footnoteRef:12] “the grammatical and ordinary sense of the words is to be [12: Grey v Peterson (1857) 6 HLC 61] adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency but no farther”[footnoteRef:13]. [13: Grey v Peterson (1857) 6 HLC 61] This rule is simply the literal rule but modified to avoid absurdity, which may seem as a positive but in reality limits the interpretation of statutes and defeats the objective of statutory interpretation of giving to effect parliaments intention as the use of the golden rule is limited in its application as it is only applied when there is absurdities caused by the literal rule thus it is used rarely.

Conclusion

In conclusion, the statement expressed in the case of Project blue sky v Australian Broadcasting Authority addresses that the modern approach to statutory interpretation no longer considers a statute according to its literal meaning but rather its purpose and in doing so may alter the words of the statute to fit the intention of parliament. The purposive approach is indeed the best approach and should be maintained as this approach best achieves the purpose of the statute and provides a broad approach to interpretation giving the judiciary both the flexibility and the discretion needed to remedy unforeseen circumstances in the future such as emerging new technologies or social developments.

Bibliography

A Articles/Books/Reports

1. Tobias Lonnquist, ‘The Trends towards Purposive Statutory Interpretation: Human

Rights at Stake' [2003] 13 Revenue Law, 18
2. Kate Tokeley, 'Trends in Statutory interpretation and the judicial process' (2002) 33(3&4) Victoria University of Wellington Law Review 545

B Cases

1. Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 395
2. CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384
3. Carr v Western Australia (2007) 232 CLR 138
4. Grey v Peterson (1857) 6 HLC 61

C Legislation

1. Acts Interpretation Act 1901 (Cth) s15(a)(a)