SPEECH

Putting Practice into Theory: Ruth Sullivan's Contribution to Legislative Scholarship, Practice, and Teaching

John Mark Keyes

THIS ARTICLE PROVIDES an account of Ruth Sullivan's contribution to legislative scholarship and practice as a law professor and a legal practitioner, perhaps most notably as the author of five editions of the most widely cited text on legislative interpretation in Canada: *The Construction of Statutes*.

Her writing on the methodology for drafting and interpreting legislation, and her teaching of these subjects has had an enormous impact and continues to be felt in the continuing citation of her work. Legislative methodology receives far too little scholarly attention in Canada despite the permeation of legislation in nearly every area of law. Ruth Sullivan's work is a powerful reminder of its significance and the need to pay attention to its practice and evolution.

CET ARTICLE REND compte de la contribution de Ruth Sullivan à la doctrine et à la pratique législatives en tant que professeure de droit et praticienne du droit, notamment en tant qu'auteure de cinq éditions du texte sur l'interprétation législative le plus largement cité au Canada : *The Construction of Statutes*.

Ses écrits sur la méthodologie de la rédaction et de l'interprétation des lois, ainsi que son l'enseignement de ces sujets, ont eu un impact énorme et continuent de se faire sentir par la citation continue de ses travaux. La méthodologie législative reçoit trop peu d'attention universitaire au Canada, malgré l'omniprésence de la législation dans presque tous les domaines du droit. Le travail de Ruth Sullivan est un rappel puissant de son importance et de la nécessité de prêter attention à sa pratique et à son évolution.

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I. INTRODUCTION

A CanLII search for references to Ruth Sullivan turns up over 4,000 hits, 3,734 of which appear in the decisions of courts and tribunals. The overwhelming majority of these hits refer to one or other of the five editions of her book on the construction of statutes. This paper is a tribute to her remarkable contribution, not only to this vast body of jurisprudence, but also more generally to teaching and drafting in the field of legislation.

Ruth Sullivan's contribution to legislative scholarship and practice can be traced back to her enrollment in the Legislative Drafting Program at the University of Ottawa Faculty of Law in 1983. This came after she completed degrees in civil and common law at McGill University and clerked for the Chief Justice of the Supreme Court of Canada, Bora Laskin. From these roots sprang a deep interest in legislation and an unparalleled ability to analyze and explain its features. She pursued her interest and applied her ability as a professor in the Common Law Section of the University of Ottawa Faculty of Law, culminating in a cohort of former students imbued with an understanding of legislation and the publication of the most widely cited Canadian book on statutory interpretation: *The Construction of Statutes*.[1]

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1 Originally published in 1974: EA Driedger, *The Construction of Statutes*, 1st ed (Toronto, ON: Butterworths, 1974) [Driedger, *Construction of Statutes 1st ed*].

Ruth (whom I refer to by her first name throughout because that is how I knew her) was not, however, exclusively an academic. In 1989–1991, we traded places in our employment: she came to the Department of Justice (Canada) to draft government bills, while I went to the University of Ottawa to teach, principally courses related to legislation and drafting. Ruth then resumed her academic career at the University until her retirement in 2011. At that point, she returned to the Department of Justice as a legislative counsel in the Legislative Services Branch, drafting regulations and providing advisory opinions on interpretive questions.

The story of Ruth's career in legislative studies is also rooted in an earlier story: that of Elmer Driedger, who had a lengthy career as legislative counsel in the Department of Justice (Canada) and rose to the rank of Deputy Minister. He also established the Legislative Drafting Program at the University of Ottawa and published the first and second editions of *The Construction of Statutes*. In the late 1980s, Ruth became involved in this program teaching the course entitled "Comprehension of Legislation" that Driedger had created and taught many years earlier at the University of Ottawa. This led to her taking on the preparation of a third edition of Driedger's book and publishing it in 1994.

This article begins by discussing legislation as a field of study to set the stage for discussing Ruth's contributions to this field. It then discusses her contributions in terms of the methodologies and analyses that constitute this field in terms of drafting and interpreting legislation and teaching these subjects.

II. LEGISLATION AS A FIELD OF STUDY AND PRACTICE

Legislation in its various aspects—drafting, enactment, interpretation, application—is a wild and woolly subject for legal scholarship and practice. It is part of virtually every area of law. Yet, as a subject in itself, it receives relatively little attention. We live in an age when legal scholarship and practice are increasingly, if not exclusively, focused on particular fields of law or policy. The drafting, enactment, interpretation, and application of legislation are often taken for granted as requiring no particular expertise beyond understanding of its subject matter. By the same token, a legal practitioner need know little about how legislation is interpreted; their job is to find a case explaining what it means. And if they have to go far afield to find one of only slender relevance, so be it. Citing authority is what matters most, particularly in a legal system oriented around common law precedent.

I am not the first to assert the inadequacy of these views about legislation. In 1951, Elmer Driedger published an article in the *Canadian Bar Review* exposing the inadequacy of case-based interpretation, which he also attributed to the lack of a coherent interpretive methodology.[2] At the Annual Meeting of the Administrative Law Section of the Canadian Association of Law Teachers in 1986, four prominent law professors discussed the challenges of teaching about legislation, lamenting its neglect in their law schools.[3] Their *cri de coeur* has not been heard since then.

There is a substantial body of scholarship relating to legislation that focuses on understanding its general features. Although it may not be well known, even in legal circles, it has existed since Jeremy Bentham began writing about legislation in the early 19th century.[4] His interest in drafting legislation was taken up by George Coode, Henry Thring, and Courtenay Ilbert in that century, while the interpretation of legislation drew the interest of Peter Maxwell.[5] In the 20th century, many notable scholars around the world inquired into and wrote about drafting and interpreting legislation.[6]

The most notable 20th century scholars in Canada were John Willis, James Alexander Corry, and of course, Elmer Driedger.[7] Scholarship on this subject continues today outside Canada with the likes of Daniel Greenberg, Helen Xanthaki, Diggory Bailey, Luke Norbury, and Ross Carter, who have taken up the mantle of their predecessors.[8] Ruth Sullivan and Pierre-André

2 EA Driedger, "A New Approach to Statutory Interpretation" (1951) 29:8 Can Bar Rev 838.

3 W MacLauchlan et al, "The Teaching of Legislation in Canadian Law Faculties" (1987) 11:1 Dal LJ 255.

4 Jeremy Bentham, "Nomography; or the Art of Inditing Laws" in John Bowring, ed, *The Works of Jeremy Bentham*, vol 3 (Edinburgh, UK: William Tait, 1843) 231.

5 EA Driedger, *The Composition of Legislation: Legislative Forms and Precedents*, 2nd ed (Ottawa, ON: Department of Justice, 1976) at 317–78 [Driedger, *Legislative Forms*]; Madeleine MacKenzie & David Purdie, eds, *Thring's Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents*, 3rd ed (Edinburgh, UK: Luath Press, 2015); Sir Courtenay Ilbert, *Legislative Methods and Forms* (Oxford, UK: Clarendon Press, 1901); Sir Peter Benson Maxwell, *On the Interpretation of Statutes* (London, UK: William Maxwell & Son, 1875).

6 See e.g. William Feilden Craies, *A Treaties on Statute Law* (London, UK: Stevens & Haynes, 1907); Rupert Cross, *Statutory Interpretation* (London, UK: Butterworths, 1976); DC Pearce, *Statutory Interpretation in Australia* (Chatswood, Austl: Butterworths, 1974); FAR Bennion, *Statute Law* (London, UK: Oyez, 1980); John F Burrows, *Statute Law in New Zealand* (Wellington, NZ: Butterworths, 1992).

7 See e.g. John Willis, "Statutory Interpretation in a Nutshell: Preliminary Observations" (1983) 16:1 Can Bar Rev 1; JA Corry, "Administrative Law and the Interpretation of Statutes" (1936) 1 UTLJ 286.

8 Daniel Greenberg, ed, *Craies on Legislation*, 12th ed (London, UK: Sweet & Maxwell, 2020); Helen Xanthaki, ed, *Thorton's Legislative Drafting*, 6th ed (London, UK: Bloomsbury, 2022);

Côté are undoubtedly the most prominent Canadian scholars to have done so, as the authors (respectively) of five editions of *Construction of Statutes* and five editions of *Interprétation des lois*.[9]

This significance of legislation as a general field of study is also reflected in the handful of legal journals devoted to it, notably the *Statute Law Review*, *The Theory and Practice of Legislation*, and *The Loophole* of the Commonwealth Association of Legislative Counsel, which provide voices for this scholarship. There is also some acceptance of the importance of legislation in the practice of law. The need for training in both legislative drafting and interpretive methodology is widely recognized.[10]

III. DRAFTING METHODOLOGY

Although much of Ruth's writing and teaching pertained to interpretation, she devoted a significant part of her career to drafting legislation and conducting research on how the readability of legislation could be improved.

When Ruth and I traded places on a two-year executive interchange in 1989, she came to the Legislation Section of the Department of Justice (Canada) to draft government bills. This experience brought her into the world of legislative drafting in a very practical way, introducing her not only to the realities of this work but also to the debates about how to draft — most notably in light of the advocacy of Plain Language that was then expanding into the realm of legal discourse. When Ruth returned to the University, she not only began work on the third edition of *Construction of Statutes*, but she also extended her research into plain language drafting and the usability of legislation. This, in turn, opened the door to

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Diggory Bailey & Luke Norbury, *Bennion, Bailey & Norbury on Statutory Interpretation*, 8th ed (London, UK: LexisNexis, 2022); Ross Carter, *Burrows and Carter Statute Law in New Zealand*, 6th ed (Wellington, NZ: LexisNexis, 2021).

9 Ruth Sullivan, *The Construction of Statutes*, 7th ed (Toronto, ON: LexisNexis, 2022) [Sullivan, *Construction of Statutes 7th ed*]; Pierre-André Côté & Mathieu Devinat, *Interprétation des lois*, 5th ed (Montreal: Les Éditions Thémis, 2021).

10 Section 2.4 of the Catalogue of CALC Publications (3rd edition) lists over 20 articles on training legislative drafters (Nick Horn & Magdalene Starke, "Catalogue of CALC Publications, 3rd Edition", online: <calc.ngo/sites/default/files/files/documents/CALC%20Catalogue%202016.pdf>). The National Requirement of the Federation of Law Societies of Canada includes "the process of statutory construction and analysis" (Canadian Federation of Law Societies, *National Requirement* (Ottawa, ON: Canadian Federation of Law Societies, 2024) at 5).

considering related fields of social science, notably linguistics, psycholinguistics, literacy theory, and cognitive psychology.[11]

Ruth's consideration of these areas is perhaps best captured in two articles she published in 2001. One, in the *Statute Law Review*, is addressed principally to legislative drafters.[12] The other, in the *McGill Law Journal*, had a broader audience: "legal educators and the practising bar".[13]

The *Statute Law Review* article, "Some Implications of Plain Language Drafting", examines how plain language drafting techniques "might affect" the interpretation of legislation.[14] Ruth focuses on a future of legislation that has not yet been drafted and interpretive decisions that have not yet been written.[15] The common law methodology of following precedent is of no interest or use. Instead, she applies "insights emerging from research in disciplines like psycholinguistics and communications."[16]

Ruth's article begins by looking at "four features or dimensions of statute law that…should be taken into account by drafters in drafting or revising statutes and by courts in interpreting them."[17] These dimensions are: "the speech act performed by the legislature upon enactment; the legal messages conveyed by the text; the meta-legal messages conveyed by the text; and the context brought to the text by its readers."[18] Her attention to these features is unparalleled in any other legal writing about legislation. It connects legislation as a written form of communication to communicative writing generally and highlights the tension between intent underlying a text and the meaning its words convey. Her analysis demonstrates the conflict that inevitably arises when legislative intent is separated from the legislator and encased in a text that is supposed to communicate on its own. This conflict is not unique to legislation; it occurs in all written communication.

The rest of the article focuses on the "meta-legal message" conveyed by legislation: messages "about the law" that contribute to the content of the normative text, but do not themselves have normative value. These

11 Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, 4th ed (Toronto, ON: Butterworths, 2002) at viii [Sullivan, *Sullivan and Driedger on the Construction of Statutes 4th ed*].

12 Ruth Sullivan, "Some Implications of Plain Language Drafting" (2001) 22:3 Stat L Rev 145 at 145 [Sullivan, "Implications"].

13 Ruth Sullivan, "The Promise of Plain Language Drafting" (2001) 47 McGill LJ 97 at 99 [Sullivan, "Promise"].

14 Sullivan, "Implications", *supra* note 12 at 162.

15 *Ibid* at 173–80.

16 *Ibid* at 146.

17 *Ibid*.

18 *Ibid*.

messages are conveyed by both features of page layout, such as English and French versions presented side by side, as well as textual features that have no normative effect on their own but may contribute to the normative effect of other provisions, such as preambles, which provide context for the provisions that follow but do not themselves express rules.[19] The article goes on to explore the meta-legal messages arising from the *Revised Statutes of Canada* and plain language drafting.[20] It raises questions not only about what these messages are, but also whether they are false in the sense that they promise accessible, understandable legislation that the normative elements of the legislation do not deliver.[21] At the heart of this question are the courts as ultimate legislative interpreters, who apply particular interpretive rules and methodologies. Thus, the article concludes by inviting courts to develop new interpretive rules to achieve the accessibility goals of plain language drafting and considering how courts might respond to this invitation.[22]

"Some Implications of Plain Language Drafting" is a rare and invaluable piece of legal scholarship. It clearly unites the drafting world with the interpretation world, demonstrating they are two sides of the same coin. It also connects the legal world to scientific disciplines that deal with communication, giving substance to the precept of "ordinary meaning" underlying legislative interpretation and the rule of law notion of knowable and accessible law. In this respect, Ruth built on Driedger's appeal to grammar in his writing on legislative drafting.

Driedger's *The Composition of Legislation* begins with chapters on "The Verb in Legislation", "The Principal Subject", "The Principal Predicate" and "Sentence Modifiers".[23] Ruth carried this interest in language to another level by considering research in emerging disciplines of linguistics and communications. Both she and Driedger recognized that legislation was not simply a legal creation; it makes use of the social phenomenon of language to communicate broadly to those it affects. The natural languages legislation uses are products of social behaviour, rather than tools created by specialists to communicate with each other.

The second article, "The Promise of Plain Language Drafting", focuses on the challenge of communicating to a diverse audience inherent in

19 *Ibid* at 146, 153, 172.

20 *Ibid* at 177.

21 *Ibid*.

22 *Ibid* at 180.

23 Driedger, *Legislative Forms*, *supra* note 5.

drafting legislative texts that apply generally.[24] It reflects Ruth's participation in plain language drafting initiatives, notably the *Employment Insurance Act* Plain Language Project undertaken by the Department of Justice (Canada) and the Department of Human Resources Development (Canada) in the late 1990s.[25] It discusses the difficulties of drafting for a diverse audience in terms of understanding who it includes, what their levels of reading competency are, and how to accommodate diverse levels in a single text.[26] Ruth attempts to thread this needle by arguing legislation should be drafted for a "target audience" or, in the absence of one, "for the most vulnerable groups affected…those who have the best claim to assistance."[27] We have here an indication of the social justice perspective that animated her work.

The second article concludes by considering how plain language drafting with a particular audience in mind will be received by those who interpret it; notably by official interpreters such as judges and administrative officials.[28] She suggests that by tailoring communication to the understanding of those who receive it—particularly through non-textual reading aids and on-line publication—plain language drafting will shake up official interpreters by undermining the positivist notion that meaning inheres in a legislative text and is the same for everyone who reads it.[29] But she also invites them "to reflect on their current practices and to question the assumptions on which those practices are based."[30]

Although the implementation of the plain language techniques Ruth considered has been slow in Canada, her call to reconsider how legislation is applied resonates with what are arguably even more transformative changes affecting legislation a little over 20 years later—notably with artificial intelligence and the transformation of legislation into computer code for applications to deliver answers to particular legal questions rather than just statements of general rules.[31] Although her analysis did not deal

24 Sullivan, "Promise", *supra* note 13.

25 Development and Special Projects Unit, *Employment Insurance Act Plain Language Project* (Ottawa, ON: Department of Justice Canada, 2001).

26 *Ibid* at 5–6, 9–10.

27 Sullivan, "Promise", *supra* note 13 at 118.

28 *Ibid* at 128.

29 *Ibid* at 122–26.

30 *Ibid* at 120.

31 Martin Perron & Anna Logie, "Rules as Code vs. ChatGPT: Lessons from Converting Canadian Federal Legislation into Code Using Blawx", [2024] Loophole 73 (December), online <calc.ngo/publications/loopholes>; Wolfgang Alschner, "Techno-Utopianism for Lawyers?: Abdi Aidid & Benjamin Alarie, *The Legal Singularity*" (2023), 55:2 Ottawa L Rev 187 at 191.

with these developments, it demonstrates the need to address them and provides an example of an analytical framework for doing so.

IV. INTERPRETIVE METHODOLOGY

A. Origins

It is easy to take for granted the existence of a methodology for interpreting legislation. However, neither the need for interpretation nor a particular methodology were always recognized. The origins of legislative interpretation in Britain are murky. In the 13th and 14th centuries, it was thought that no one but the legislator — the King — could interpret legislation.[32] In the 14th century, the King's courts began to assume this role but in a very loose sense, engaging in what Plucknett describes as "free interpretation", unconstrained by the text.[33] However, by the middle of this century, this approach began to give way to one strictly based on the text, incorporating rules of logic and grammar and developing into "a system of great complexity".[34] This was the beginning of a methodology for interpreting legislation, which would evolve considerably over the following centuries.

B. Driedger's Modern Principle

In his first edition of *Construction of Statutes*, Driedger included an article of Corry, published in 1936, addressing this evolution.[35] Driedger's first three chapters trace this evolution through three "rules" that emerged over time:

- the Mischief Rule in *Heydon's Case*[36] turning largely on legislative objects;
- the Literal Rule, recognized in *Sussex Peerage*[37] as a "revolt against judicial legislation" under which "the words of an Act were dominant"; and
- the Golden Rule, articulated in *Grey v Pearson*,[38] which introduced absurdity as a basis for departing from the grammatical and ordinary sense.

32 Theodore FT Plucknett, *A Concise History of the Common Law*, 5th ed (Boston, MA: Little, Brown and Company, 1956) at 328–29.
33 *Ibid* at 334.
34 *Ibid*.
35 Corry, *supra* note 7 at 203ff.
36 (1584), 3 Co Rep 7b.
37 (1884), 11 Cl & F 85, 8 ER 1034.
38 (1857), 6 HLC 61, 10 ER 1216.

From these three rules, Driedger produced his Modern Principle:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[39]

Interpretive methodology in Canada shifted significantly in the middle of the 20th century from a largely text-based (literal) approach to one that considered the purposes underlying the text. Driedger had a role in this shift, demonstrating that the use of legislative purposes could be traced back to the 14th century and promoting it as an essential part of interpretive methodology. By the 1970s, Canadian courts were paying more attention to this interpretive dimension, particularly as it was embraced by progressive judges on the Supreme Court; notably Laskin, Spence, and Dickson.

Driedger was also a pioneer in highlighting the importance of context, dividing it between internal and external context and devoting two chapters to it. Canadian court decisions on interpretive questions are often (some might say ritually) prefaced with the citation of Driedger's Modern Principle.[40] When Ruth took on the preparation of the third edition of the *Construction of Statutes*, she also took on this Principle.

C. Sullivan's Rule in Modern Interpretation

The third edition does not contain Driedger's original statement of his Modern Principle. Instead, Ruth reformulated and expanded it as a "rule in modern interpretation":

> There is only one rule in modern interpretation, namely, courts are obliged to determine the meaning of legislation in its total context, having regard to the purposes of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the

39 Driedger, *Construction of Statutes 1st ed*, *supra* note 1 at 67.

40 Usually citing the second edition: EA Driedger, *The Construction of Statutes*, 2nd ed (Toronto, ON: Butterworths, 1983) at 87 [Driedger, *Construction of Statutes 2nd ed*].

> legislative text; (b) its efficacy, that is, its promotion of the legislative purpose; and (c) its acceptability, that is, the outcome is reasonable and just.[41]

The preface to the third edition explains this reformulation as "more fluid and more reflective … of the real complexity of interpretation.[42] However, it not only adds detail to Driedger's principle, it also differs in framing it as a "rule". Principles and rules are not the same.[43] Principles are associated with discretion whereas rules tend to exclude discretion. This runs counter to Ruth's objective of a "more fluid and more reflective [account] of the real complexity of interpretation."[44] However, embedded in her "rule" are requirements to "take into account" various matters. And the preface also says, "I share Driedger's conviction that statutory interpretation is not a rule-governed activity, but rather an activity in which rules are used either effectively or ineffectively."[45] Finally, in what was to become one of her most prescient if not influential comments about interpretation, she incorporated the notion of "justification" into interpretive methodology, a notion that has now become a central feature of judicial review in Canada as recognized in the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*.[46]

A second change in Ruth's reformulation is to begin with "total context" and "purposes" rather than the "words". This shift signals a debate that continues to divide jurists about where the interpretive process should begin. One of the most recent examples is in *Quebec (AG) v 9147-0732 Québec inc*[47] where the Supreme Court of Canada divided five to four over whether the interpretation of provisions of the *Canadian Charter of Rights and Freedoms* (specifically section 12 dealing with cruel and unusual punishment) should begin with the words of a provision or with its purposes. Although the court unanimously agreed on the resulting interpretation and on the need to consider both the words and purposes, the majority considered the words to be the starting point while the minority asserted the purposes as the first aspect for consideration.[48]

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41 Ruth Sullivan, *Driedger on the Construction of Statutes*, 3rd ed (Markham, ON: Butterworths, 1994) at 131 [Sullivan, *Driedger on the Construction of Statutes 3rd ed*].

42 *Ibid* at vi.

43 Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977) at 22ff.

44 Sullivan, *Driedger on the Construction of Statutes 3rd ed*, *supra* note 41 at vi.

45 *Ibid* at vi.

46 2019 SCC 65 at para 14.

47 2020 SCC 32.

48 *Ibid* at paras 8, 68.

The starting point for interpretation is not a trivial matter. If one starts with the meaning associated generally with the words, it provides a frame of reference, perhaps even a presumption that the meaning must fit within that initial understanding. On the other hand, if one starts with purposes, they provide the frame of reference and a presumption that the meaning must advance those purposes. Presumptions play a critical role in the application of the law generally and make a difference in close cases. The *Quebec inc.* case was not close in terms of how the text and purposes aligned with each other, but if it had been, the Court might have disagreed not only on the methodology but on the result as well.

Ruth's third edition significantly expanded discussion of many topics (original meaning, bijural interpretation, relationship between legislation and common law, extraterritorial application, Crown immunity, obsolete legislation, and mistakes) and included new chapters on plausibility and original meaning. It also dispensed with some elements of Driedger's editions, notably his treatment of retrospectivity, replacing it with a distinctive treatment of temporal operation integrating work by Canada's other leading author on legislative interpretation: Pierre-André Côté.[49]

The replacement of Driedger's Modern Principle with Ruth's Rule in the third edition created some consternation. The judiciary had become quite attached to the Modern Principle and continued to cite it from the second edition. For example, in *Re Rizzo & Rizzo Shoes Ltd* in 1998, the Supreme Court referred to both the second and third editions, but quoted the Modern Principle from the second edition.[50] Ruth's response in her fourth edition published in 2002 was to restore the Modern Principle and devote the first chapter to explaining its importance and how it opened the door to her more detailed exploration of interpretive issues.[51]

In 1997, Ruth also published a shorter text entitled *Statutory Interpretation* as part of a series called Essentials of Canadian Law.[52] Its aim was to provide basic information about legislation, explain rules of interpretation in a coherent framework and "above all, to indicate how the rules are used in analysis of legislative texts and the construction of arguments to justify particular outcomes."[53]

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49 Sullivan, *Driedger on the Construction of Statutes 3rd ed*, *supra* note 41 at vii.

50 1998 CanLII 837 at para 21.

51 Sullivan, *Sullivan and Driedger on the Construction of Statutes 4th ed*, *supra* note 11 at vii–viii, 1–18.

52 Ruth Sullivan, *Statutory Interpretation* (Toronto, ON: Irwin Law, 1997).

53 *Ibid* at 1.

Finally, Ruth's writing in interpretation went beyond her two books. She published at least six articles in law journals focusing on particular issues or developments in legislative interpretation. These articles display her unparalleled critical skills and wit in the service of getting to the bottom of interpretive questions and exposing unsatisfactory answers in court decisions. Perhaps the best example is an article provocatively entitled "The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation".[54] In it, she skewers examples of legal reasoning in particular cases by exposing it as "tricks" with little more than rhetorical value and no substance. For example, one of these tricks is the "Shifting Meaning Game" which involves ascribing "plain" meaning to one or other of a variety of more particular types of meaning (dictionary, literal, facial, intended, audience-based, applied). She then concludes:

> In practice the courts have no fixed understanding of what they mean by "meaning" and no standard approach to establishing it in particular contexts. They are free to use the dictionary or ignore it; to consider the audience for which the legislation was written or ignore it; to appeal to context or purpose or stick to the literal meaning, all as they see fit. These options create choice. But because the same vague terminology is indiscriminately applied to all the different possibilities, the choices being made are not apparent.[55]

This underscores Ruth's fundamental criticism of judicial interpretation: That it does not disclose the real reasons that underlie it, whether they are an understanding of legislative purpose or what the judge had for breakfast.

D. Text, Context, and Purposes

It is now commonplace in Canadian cases to see interpretation decisions organized under the headings "text", "context", and "purposes". This practice has emerged in the past 20 years or so. It is thus not surprising Driedger and Sullivan (in her earlier editions) did not adopt this organizational structure, but it emerges in later editions of *Construction of Statutes*. After providing an overview of statutory interpretation and the modern principle in chapters one and two, the seventh edition goes on to address

54 Ruth Sullivan, "The Plain Meaning Rule and Other Ways to Cheat at Statutory Interpretation" in Ejan MacKaay, ed, *Les Certitudes du droit—Certainty and the Law* (Montreal: Les Éditions Thémis, 2000) at 151–88.

55 *Ibid* at 169.

textual features in chapters three to eight, purposive considerations in chapters nine and ten, and contextual matters in the following chapters. However, not all matters fit neatly into this tripartite structure. In fact, matters generally considered contextual are used to determine the meaning of words (text) and the objectives underlying legislation (purposes).[56] Presumptions of intent are part of the common law context for interpretation, but they are supposed to indicate purposes. And some types of legislation (for example penal or fiscal legislation) or legislative provisions (for example, dealing with the temporal operation of legislation) merit distinctive attention addressing the texts, contexts, and purposes that drive them.

The title of *Construction of Statutes* has varied over the course of its seven editions, the first two of which are entitled (*The*) *Construction of Statutes*.[57] The next four editions variously include the names of the two authors—*Driedger* on the third, *Sullivan and Driedger* on the fourth, and *Sullivan* on the fifth and sixth.[58] In her final edition, Ruth returned to the original title, omitting names.[59] We can speculate on the significance of this, but I would suggest it has much to do with Ruth's desire to have the book stand on its own, representing the work and thinking of those whose contributions to the development of interpretive methodology she incorporated into this book, most notably Driedger, whom she acknowledged at the beginning of the foreword to the seventh edition:

> This book has become extremely long. One reason for its length is my continuing commitment to Driedger's ambition to not only state the "rules" of statutory interpretation but also to model their application, to exhibit the reasoning courts engage in to justify their conclusions.[60]

In her editions of the *Construction of Statutes*, Ruth did much more than pursue the same ambitions as Driedger. She added considerably to his work and further developed his analyses, particularly in relation to the interpretive significance of legislative drafting, linguistics, and context. My aim in

56 John Mark Keyes & Wendy Gordon, *Drafting, Interpreting and Applying Legislation* (Toronto, ON: Irwin Law, 2023) at 76–77.

57 Driedger, *Construction of Statutes 1st ed*, *supra* note 1; Driedger, *Construction of Statutes 2nd ed*, *supra* note 40.

58 Sullivan, *Driedger on the Construction of Statutes 3rd ed*, *supra* note 41; Sullivan, *Sullivan and Driedger on the Construction of Statutes 4th ed*, *supra* note 11; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed (Markham, ON: LexisNexis, 2008); Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham, ON: LexisNexis, 2014).

59 Sullivan, *Construction of Statutes 7th ed*, *supra* note 9.

60 *Ibid* at vii.

this paper is to highlight the main elements of her accomplishments, not only in the *Construction of Statutes*, but also in her many other publications, research initiatives, and courses she taught.

The following discussion addresses other significant aspects of how Ruth took Driedger's material and developed it further. It is organized in terms of the tripartite structure of text, context, and purposes because of its general familiarity and usage, and despite its limitations.

E. Text

The need to consider the text of legislation is indisputable. The meaning of the text, and how one arrives at it and applies it to a factual situation, is far more debatable. Indeed, this is why the principles and rules discussed above entail consideration of other matters in addition to the text.

Driedger's notion of the text was firmly rooted in the word usage and grammar of "ordinary language". He acknowledged the judicial use of dictionaries to assist in determining the meaning of words, as well as expert evidence to determine "technical meaning", but also noted the statement of Justice Swinfen-Eady in *Camden v Inland Revenue Commissioners* that "any evidence on the question [of the meaning of words] was wholly inadmissible".[61] Ruth was not content to leave the matter there in the third edition. She tackled it at the outset in her first chapter discussing ordinary meaning, challenging the exclusion of such evidence and pointing to a recent case where it was admitted but found to be unpersuasive.[62]

Subsequent editions expanded the discussion of this issue to the use of judicial notice (as a substitute for evidence on questions of fact) and the Supreme Court's acceptance of evidence of meaning as a contextual matter in a case involving the interpretation of "government institution".[63] Ruth also noted computer assisted linguistic analysis (Corpus Linguistics) as a potential interpretive tool and the general threshold for the admissibility of expert evidence.[64] As the world moves ahead with artificial intelligence tools, the need to consider (and scrutinize) tools becomes all the more apparent.

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61 Driedger, *Construction of Statutes 2nd ed*, *supra* note 40 at 161–62, citing 139 F (2d) 697 (6th Cir 1943).

62 Sullivan, *Driedger on the Construction of Statutes 3rd ed*, *supra* note 41 at 14–16; *Canada (AG) v Mossop*, 1990 CanLII 12998 (FCA).

63 Sullivan, *Construction of Statutes 7th ed*, *supra* note 9 at 35–46; *Canada (Information Commissioner) v Canada (Minister of National Defence)*, 2011 SCC 25 at para 33.

64 Sullivan, *Construction of Statutes 7th ed*, *supra* note 9 at 44–46.

F. Purposes

Driedger's second edition addressed purposes in a short chapter near the beginning (chapter three). However, it consists mainly of references to older cases applying what had come to be called the "mischief rule". In the third edition, Ruth moved the discussion of purposes to chapter two and vastly expanded it, illustrating its significance in modern legislation and case law and reviewing the many sources courts have turned to when establishing what legislative purposes are.[65] She also created a new chapter to follow her chapter on purposes: chapter three on "Avoiding Absurd Consequences". It consolidated the disparate discussion of "absurdity" in the second edition and its sequence makes considerable sense since absurdity is oriented around the supposed intention of the legislator; in other words, purposes. Subsequent editions have maintained this pairing. However, the discussion of presumed intent (which is connected to purposes) was kept with the discussion of contextual features, as Driedger had originally arranged it.

G. Context

Both Driedger's Modern Principle and Ruth's modern rule emphasize the importance of context. This too is another contested aspect of interpretive methodology: what contextual features can an interpreter consider and how much influence should they have on establishing meaning? The essential difference between strict, literal approaches to interpretation that prevailed well into the 20th century and the approaches that developed in the latter part of that century can be understood in terms of context.

A literal approach assumes words have fixed meanings regardless of the circumstances in which they are used. Context is limited to the usage associated with the words, usage that is assumed to be known to drafters, legislators, and interpreters based on their fluency in the language used to express the legislation. The difficulty with this approach (which has led to its rejection) is that words in natural languages such as English almost always have multiple meanings. Ambiguity about which meaning is intended is resolved by the context in which words are used. An additional complicating factor is that the meaning of words often changes with usage over time. What a word means today is not necessarily the same as what it meant previously, which is, on an originalist view of legislation, the intended meaning. Thus, a consideration of context is generally accepted

65 Sullivan, *Driedger on the Construction of Statutes 3rd ed*, *supra* note 41, ch 2.

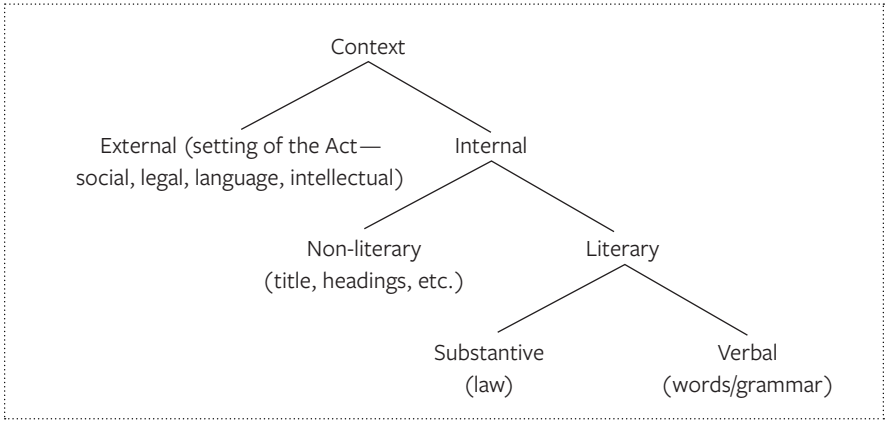
as essential to legislative interpretation; the question is, how much of it can be considered, in other words, what counts as interpretive context?

In the analytical framework of text-context-purpose, the distinction among these three categories is not clear-cut. Textual matters might generally be thought to include the meaning of groups of words arranged in sentences or a series of related sentences. Each word has a context (the other words in the group), but they are necessarily considered as a group subject to the interpretive techniques associated with textual analysis. Other, broader contextual features also influence meaning but are often analysed distinctively in terms of types of sources.

Driedger's Modern Principle identifies contextual elements dealing with:

1. grammatical and lexical structure of language;
2. other provisions of the legislation from which the "scheme" can be deduced;
3. the object (purposes) underlying the provisions; and
4. the "intention of Parliament".

He also illustrated his conception of context with a diagram dividing, subdividing, and arranging it under a series of headings:



Ruth reworked these categories into a more extensive notion of context, which she organized under eight headings:

1. Immediate context
2. Other language version
3. Act as a whole
4. Related legislation

5. Common law
6. Common law rules for interpreting legislation
7. External context
8. Extrinsic aids

The last two categories tend to generate the most disagreement about their use, particularly in terms of social or economic conditions (external context) and parliamentary proceedings (extrinsic aids). In both respects, Driedger had clearly demonstrated judicial openness to using them, and Ruth tracked the expanding judicial recourse to them through the end of the 20th century and into the 21st. She also noted some continuing judicial reservation about them and highlighted the dangers of judicial notice, concluding:

> As courts work out the implications of total context, it becomes increasingly evident that interpretation using the modern principle is hard work. It requires interpreters not only to be experts in language and law (including common law, international law, constitutional law and statute law) but also to develop expertise in history, sociology, anthropology, psychology and more.[66]

V. TEACHING METHODOLOGY

Legislative scholarship, drafting legislation, and interpreting it go hand in hand with teaching about legislation. Both Driedger and Ruth are exemplars in this regard.

Driedger published *A Manual of Instructions for Legislative and Legal Writing*, which he described as "an attempt to put on paper the substance of the legislative drafting seminars I conducted at the University of Ottawa from 1970 to 1979."[67] The *Manual* consists of six books encapsulating Driedger's lectures, but the bulk of them consists of drafting exercises based on existing (and poorly drafted) legislative provisions that students were asked to redraft. Each exercise includes redrafts Driedger prepared as well as student redrafts. The redrafts are accompanied by Driedger's comments on the drafting issues the exercises were designed to illustrate and reflect how Driedger and his students addressed them in class discussions.

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66 Sullivan, *Construction of Statutes 7th ed*, *supra* note 9 at 614, 624–26.

67 EA Driedger, *A Manual of Instructions for Legislative and Legal Writing* (Ottawa, ON: Minister of Supply and Services Canada, 1982).

A similar linkage between practice and teaching also appears in the foreword to Driedger's first edition of the *Construction of Statutes*, which grew out of lectures he gave at the University of Ottawa.[68] Its purpose was to provide "examples or illustrations of the problems that arise with statutes and how the courts go about solving them, rather than as authorities for propositions of law.[69]

As the *Manual of Instructions* and *The Construction of Statutes* demonstrate, Driedger's teaching approach was rooted in practice, focusing on particular cases and examples of legislative provisions, and discussing problems with their drafting and interpretation and how to address the problems. Driedger's approach to teaching legislative drafting and interpretation was continued into the 1990s by his successors at the University of Ottawa. It was a teaching methodology to which both Ruth and I were exposed when we enrolled in the Legislative Drafting Program at the University of Ottawa in the early 1980s. And it has had a significant influence on our own approaches to teaching.

Ruth's legislative teaching concentrated on legislative interpretation, principally the course Driedger had originated. Her approach, like his, was pragmatic, using cases to gain insight into the application of the "rules" of interpretation and develop compelling arguments about the meaning of legislative provisions. The materials consisted of appellate cases (particularly from the Supreme Court of Canada) and her shorter text, *Statutory Interpretation*.[70] She replicated that text in the course structure, organizing the classes around one or other of its chapters.

Ruth also provided considerable interpretation training to practising lawyers and public servants, particularly during her time working at the Department of Justice. Given the dearth of courses on legislative interpretation in Canadian law schools,[71] there is a significant need for such training, particularly among government lawyers whose practices substantially involve the application of legislation.

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68 Driedger, *Construction of Statutes 1st ed*, *supra* note 1 at vii.

69 *Ibid*.

70 Now in its third edition: Ruth Sullivan, *Statutory Interpretation*, 3rd ed (Toronto, ON: Irwin Law, 2016).

71 John Mark Keyes, "Challenges of Teaching Legislative Interpretation in Canada: Tackling Scepticism and Triviality" (2019) 13 JPPL 479.

VI. CONCLUSIONS

As long as those with authority to legislate continue to create new legislation, there will be a need to draft, interpret, and apply it. These needs can only be met if those conscripted to do these things know how to do them effectively, to produce just and defensible legal results, which is what drafting and interpretive methodology are supposed to accomplish. These methodologies are, like the communities legislation governs, complex and organic, shaped by those who apply them. They are also shaped by scholars like Ruth who look beyond particular cases and subjects of legislation to see them as systemic tools for managing legislation. She brought her brilliance to bear on these methodologies, contributing to the quest for order and enlightenment in the operation of legislation. She continued to blaze the trail through the wilderness of legislation that her predecessors, particularly Driedger, had staked out before her. But the trail is far from complete, if indeed it ever will be. Just as Ruth continued the scholarship, practice, and teaching of her predecessors, so too hers demand continuation. This is a challenge I am wrestling with in the twilight of my own career.