

Chapter 24

Legal Interpretation – The Bounds of Legitimacy*

Interpretation is always undertaken for a purpose. The purpose affects the technique, and the permissible input, of the interpreter. Two examples illustrate the point. At an international conference, or in a court of law, or in some other formal setting, the job of an interpreter may be to translate into English what is being said by someone who is speaking in another language. This is not a purely mechanical exercise which gives, word for word, the English equivalent of each foreign word used by the speaker. Such a literal rendition may fail to convey the sense of what is being said, and would sometimes result in error, or even absurdity. Even so, and making allowance for the skill and judgment required, the aim is to express in English the meaning of what has been said in a foreign language; not word for word, or even phrase for phrase, but so as to communicate what has been said. It would be inappropriate for the interpreter to add to, or modify, what has been said, for example because the interpreter thinks it is wrong, or incomplete. That would become, not interpretation, but interpolation.¹ The audience is entitled to be told what the speaker has said, not what the interpreter thinks the speaker should have said, or even what the speaker probably meant to say. At the other extreme, interpretation of a literary or artistic work may involve imagination and creativity. A successful interpretation may surprise and delight the author. An interpretation of a musical work may reflect the personality of the interpreter as much as that of the composer. This is what the composer and the audience expect. In this setting, interpretation has a different purpose, and therefore the role of the interpreter is different.²

Interpreting a legal text lies between these two extremes. The role of the interpreter is less restricted than in the first example, but it is not creative, as in the second.

The need for interpretation of a text arises when its meaning is not obvious to those who need to understand it. Nobody writes or speaks in language so plain as to require no effort at understanding. Plain English itself can be an elusive concept. Simple and direct speech may not have a clear meaning if there is a mismatch between the simplicity of the language and the complexity of the subject. In much of what we say and write, and in much of what we understand others to say or write, we rely on context. Without that, reasonable economy of language would not be possible. Words commonly take their meaning from their context. An appreciation of context, in its widest sense, is an essential aid to all interpretation.

* A speech given at Sydney University Law School, 16 September 2009.

1 The distinction between interpretation and interpolation was made by Lord Steyn in “Dynamic Interpretation Amidst an Orgy of Statutes” (2003) 35 *Ottawa Law Review* 163 at 166.

2 Priestley, Lancelot, “Judges as Story Tellers”, a paper delivered at the Law and Literature Association Conference, San Francisco, October 1995.

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