

## REVISITING THE USE OF LEGISLATIVE HISTORY IN STATUTORY INTERPRETATION

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*This article re-evaluates the place of legislative history in Canada’s modern interpretive method. It frames the debate around enduring tensions among text, purpose, and legislative intent. Tracing the shift from exclusion to cautious inclusion of legislative history and other extrinsic materials, it exposes the methodological uncertainty shaping judicial interpretation. The article shows how errors arise when courts conflate parliamentary evidence with executive commentary or treat incomplete records as authoritative. Finally, it proposes a structured, text-centred methodology that assigns legislative history a restrained, principled, and confirmatory role. This approach promotes interpretive coherence, transparency, and fidelity to constitutional principles and the separation of powers.*

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### INTRODUCTION

The modern approach to statutory interpretation requires courts to consider the text, context, and purpose of a statute to ascertain the intention of the legislature.<sup>1</sup> Courts have increasingly permitted themselves to look at evidence external to the enacted text, including “legislative history.”<sup>2</sup> Though these materials were traditionally excluded by English and Canadian courts,<sup>3</sup> the modern approach generally admits this evidence.

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<sup>1</sup> *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 118.

<sup>2</sup> As we will note, the term “legislative history” runs together various forms of parliamentary evidence — some of which may be more relevant to the interpretive task than others. We explain these distinctions in Part II.

<sup>3</sup> See e.g. *Millar v Taylor* (1769), 4 Burr 2303 (KB UK) [*Millar*]. One learned scholar has argued that this rule did not, in fact, begin so cleanly in *Millar*: John J Magyar, “Debunking *Millar v Taylor*: The History of the Prohibition of Legislative History” (2020) 41:1 Stat L Rev 32.



With increasing use of parliamentary evidence has come increased judicial “cautions” and “caveats.”<sup>4</sup> The Supreme Court of Canada has confirmed that legislative history cannot be used as “direct” evidence of legislative intent,<sup>5</sup> but it can be used to establish the purpose of the legislation<sup>6</sup> or to confirm that a particular interpretation is correct.<sup>7</sup> More generally, the Supreme Court has registered broader worries about the improper use of legislative history. In the 2021 case of *MediaQMI*, the Supreme Court offered a stern statement that “[n]o rule of statutory interpretation justifies neutering a legal rule stated in clear terms on the basis of statements made during parliamentary debates.”<sup>8</sup> It was followed in 2022 with cautions from the Supreme Court that “statements of purpose in the legislative record may be rhetorical and imprecise.”<sup>9</sup> These remarks are not new: in the seminal case of *Rizzo & Rizzo Shoes Ltd. (Re)*, the Supreme Court highlighted, but did not enumerate, the “frailties” of Hansard in particular.<sup>10</sup>

These cautions exist alongside broader important jurisprudential statements about the centrality of statutory text in determining the legislature’s intent. In the recent case of *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, Chief Justice Wagner underscored that “the text of the statute ... [is] the anchor of the interpretive exercise,”<sup>11</sup> necessitating a careful approach to the use of purpose in interpretation to preserve the focus on the text.<sup>12</sup> Though the Supreme Court’s commitment to this principle is currently unclear, it provides an intriguing lens through which to understand the use of legislative history.

This article elaborates on the Supreme Court’s cautions about legislative history, given its emphasis on the text of statutes, and suggests a structured and coherent methodology for the use of legislative history. Because the Supreme Court has not fully explained how distortions in legislative history might limit its relevance in relation to the text,<sup>13</sup> we take up that mantle by explaining how failing to distinguish between different forms of legislative history may lead to a distorted account of the legislature’s meaning. We also suggest a way forward consistent with the Supreme Court’s cautions about legislative history.

In Part I, we briefly explain how courts have used legislative history in conjunction with fresh clarifications in the law of statutory interpretation, culminating in recent decisions wherein the Supreme Court has re-articulated worries about the probative value of legislative history. In Part II, we outline how courts have treated different forms of legislative history, sometimes haphazardly, illustrating the worries expressed in *MediaQMI*. We focus on several different types of legislative history that courts confound: (1) Library of Parliament

<sup>4</sup> Stéphane Beaulac, “Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or of Weight?” (1998) 43:3 McGill LJ 287 at 312.

<sup>5</sup> *R v Heywood*, [1994] 3 SCR 761 at 787 [*Heywood*].

<sup>6</sup> *Canada 3000 Inc (Re); Inter-Canadian (1991) Inc (Trustee of)*, 2006 SCC 24 at para 57 [*Canada 3000 Inc*].

<sup>7</sup> *MediaQMI inc v Kamel*, 2021 SCC 23 at para 38 [*MediaQMI*].

<sup>8</sup> *Ibid* at para 37.

<sup>9</sup> *R v Sharma*, 2022 SCC 39 at para 89 [*Sharma*].

<sup>10</sup> See e.g. 1998 CanLII 837 at para 35 (SCC) [*Rizzo*].

<sup>11</sup> 2024 SCC 43 at para 24 [*CISSS A*] [emphasis added].

<sup>12</sup> See e.g. *TELUS Communications Inc v Wellman*, 2019 SCC 19 at para 83 [*Telus v Wellman*]; *R v Rafilovich*, 2019 SCC 51 at para 30; *R v Breault*, 2023 SCC 9 at paras 7, 26 [*Breault*]; *Piekut v Canada (National Revenue)*, 2025 SCC 13 at para 110 [*Piekut*]; *Telus Communications Inc v Federation of Canadian Municipalities*, 2025 SCC 15 at para 32.

<sup>13</sup> *MediaQMI*, *supra* note 7 at para 37.

summaries; (2) background and technical papers; and (3) *Charter* Statements and clause-by-clause binders. We then focus on how some material traditionally contained in the category of “legislative history” — committee materials, for example — can be incomplete, distorting the interpretation of the legislature’s text. In Part III, and with these examples in mind, we posit how courts should approach legislative history to maintain the focus on the enacted text.

We should note that we do not propose an empirical study of the use of legislative history in Canadian courts. Stéphane Beaulac and John Magyar have ably undertaken that task in different time periods,<sup>14</sup> as has Graham Steele in a provincial context.<sup>15</sup> Instead, we identify cases where the Supreme Court’s pronouncements on legislative history endorse a more restrictive approach than the general, permissive trend identified most recently in Magyar’s study.<sup>16</sup> We seek to tease out, and explain further, the cautions expressed by the Supreme Court in its jurisprudence.

### I. ENDURING CAUTIONS: FROM EXCLUSION TO A MODERN, PRINCIPLED APPROACH

From Confederation on through Canada’s first century, Canadian courts followed the strict British rule that excluded legislative history from consideration.<sup>17</sup> Three justifications were typically offered for the strict exclusionary rule: (1) parliamentary sovereignty; (2) reliability concerns; and (3) the rule of law.<sup>18</sup> Each of these themes continue to inform discussions of legislative history. Nonetheless, the canonical modern statement on legislative history is contained in *Rizzo*, a 1998 case wherein the Supreme Court confirmed both that legislative history is a valid tool of interpretation and that it should be used cautiously given its frailties.<sup>19</sup>

With *Rizzo*, the Supreme Court became more willing to look at legislative history for particular purposes. A majority of the Supreme Court endorsed the proposition that “[a] good starting point to interpret a statute properly is to examine, however briefly, its legislative history.”<sup>20</sup> In 1999’s *Francis v. Baker*, the Supreme Court relied on a Minister’s third reading speech to help interpret the purpose of the *Federal Child Support Guidelines*.<sup>21</sup>

In recent cases, the Supreme Court has articulated concerns about legislative history that match those motivating the exclusionary rule without saying so directly. Indeed, the Court’s majority in a 2025 case emphasized “remaining mindful of their limited reliability

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<sup>14</sup> See Beaulac, *supra* note 4; John James Magyar, “The Evolution of Hansard Use at the Supreme Court of Canada: A Comparative Study in Statutory Interpretation” (2012) 33:3 Stat L Rev 363 [Magyar, “Evolution of Hansard”].

<sup>15</sup> Graham Steele, “Who Speaks for Parliament?: Hansard, the Courts and Legislative Intent” (2017) 40:1 Can Parliamentary Rev 6.

<sup>16</sup> Magyar, “Evolution of Hansard”, *supra* note 14 at 388–89.

<sup>17</sup> *Millar*, *supra* note 3.

<sup>18</sup> See *Pepper (Inspector of Taxes) v Hart*, [1992] UKHL 3 at 621–46, Browne-Wilkinson, LJ [*Pepper*]. See also Lewis Graham, “30 Years of *Pepper v Hart*: An Empirical Review” (2025) 46:2 Stat L Rev 1.

<sup>19</sup> *Rizzo*, *supra* note 10 at paras 21, 31, 35.

<sup>20</sup> *Hills v Canada (Attorney General)*, 1988 CanLII 67 at para 20 (SCC) [*Hills*].

<sup>21</sup> 1999 CanLII 659 at paras 38–39 (SCC).

and weight” in referring to parliamentary debates in particular.<sup>22</sup> Three concerns motivate this warning.

First, a stronger distinction between Parliament and the courts underwrote a respect for parliamentary action that is still relevant today. While historical starting points are always arbitrary, the *Bill of Rights, 1689* is important in part because it enshrined parliamentary privilege.<sup>23</sup> In short, proceedings in Parliament were not to be questioned outside of Parliament — including before the courts. These changes, alongside others, created “a doctrine of corporate personality and supremacy”<sup>24</sup> in Parliament. This, so the story goes, “prevented the judges from piercing the corporate veil to ascertain the best available evidence of that intent which it was their duty to ascertain and enforce.”<sup>25</sup> The rise of canonical statutory texts made it easier for judges to conclude that the legislative intent was represented in the text itself.<sup>26</sup>

It has long been the case that courts frame the object of statutory interpretation as the determination of legislative intent.<sup>27</sup> The Supreme Court has never indicated the precise definition of that concept. However, it has drawn a distinction between the intent of the legislature as an institution — represented in a text — and the intent of individual members of the legislature. As Justice Cory noted in *Heywood*, “it may be said that the corporate will of the legislature is only found in the text of provisions which are passed into law.”<sup>28</sup>

*CISSA* stands as the example *par excellence* of recent cases in which the Supreme Court has emphasized the text as a key element of the modern approach, calling to mind the justification underpinning the exclusionary rule.<sup>29</sup> This emphasis has also followed recent cases offering clarifications about the use of statutory purpose, to preserve a focus on the enacted text.<sup>30</sup> In general, these cases warn against an excessively abstract definition of statutory purpose that could “overwhelm ... other objectives” expressed through a close reading of the text.<sup>31</sup> As Justice Jamal noted in *Piekut*, these objectives may qualify a more abstract statutory purpose.<sup>32</sup> Determination of the intent of the legislature must incorporate these qualifications.<sup>33</sup>

As noted above, the Supreme Court’s commitment to the ideas expressed in *CISSA* and *Piekut* is not entirely clear. One could be forgiven for recent confusion on the point. In October 2025, the Court’s 6-3 majority in *Wilson* opined that “a provision must be interpreted

<sup>22</sup> *Piekut*, *supra* note 12 at para 75.

<sup>23</sup> (UK), 1 Wm and Mar, c 2.

<sup>24</sup> DG Kilgour, “The Rule Against the Use of Legislative History: ‘Canon of Construction or Counsel of Caution?’” (1952) 30:8 Can Bar Rev 769 at 782.

<sup>25</sup> *Ibid.*

<sup>26</sup> See e.g. Neil Duxbury, *Elements of Legislation*, (Cambridge: Cambridge University Press, 2013) at 21–23.

<sup>27</sup> See e.g. *The King v Dubois*, 1935 CanLII 1 at 381 (SCC); *Bailey v City of Victoria*, 1920 CanLII 367 at 49 (SCC); *R v Multifarm Manufacturing Co*, [1990] 2 SCR 624 at 630.

<sup>28</sup> *Heywood*, *supra* note 5 at 788.

<sup>29</sup> *CISSA*, *supra* note 11 at para 24.

<sup>30</sup> *Breault*, *supra* note 12 at para 26; *Telus v Wellman*, *supra* note 12 at para 83; *Piekut*, *supra* note 12 at para 110.

<sup>31</sup> *Telus v Wellman*, *supra* note 12 at para 83. See also *Piekut*, *supra* note 12 at para 110.

<sup>32</sup> *Piekut*, *supra* note 12 at para 110.

<sup>33</sup> *CISSA*, *supra* note 11 at para 24.

considering its entire purpose and context — the text is not in itself determinative.”<sup>34</sup> This was followed in December 2025 in the *Carignan* case, with a unanimous court emphasizing the reasoning in *Piekut* that “the modern approach to statutory interpretation makes the text the anchor of the interpretative exercise, because the text specifies the means chosen by Parliament to achieve its purposes and attain its goals.”<sup>35</sup> In our view, some aspects of the *Wilson* case are incongruous with the overall jurisprudential trend of the Supreme Court — which emphasizes the primacy of the text in interpretative exercises. The text remains the anchor. Of course, the currents of extrinsic evidence may impact the precise movement of the ship, and perhaps this is what *Wilson* sought to express.

This all connects to legislative history and the conception of legislative intent expressed in *Heywood*. Legislative history can be probative “as long as it is relevant and reliable and is not assigned undue weight.”<sup>36</sup> As a result, these qualifications could be understood as consistent with the overall focus in *Piekut* and *CISSS A* on the use of purpose. If legislative history can be used as a source of statutory purpose, then it must be used in a manner consistent with the guidance in these cases. *MediaQMI* emphasizes that legislative history cannot be used to suggest an interpretive result that directly contradicts the semantic meaning of the text,<sup>37</sup> and this underscores the principle of text as anchor. The statement in *MediaQMI* can be usefully understood by referencing the comments of the Supreme Court majority in *Sharma* that “[w]hat is to be identified is the purpose of *Parliament*, being that of its collective membership as expressed in its legislative act, and *not* the purposes of its individual members.”<sup>38</sup>

A second set of more practical concerns also played a role in justifying the exclusionary rule. These concerns can generally be categorized as problems with the reliability of legislative history. Historically, in the United Kingdom, there was a period in which unofficial reports of parliamentary debates were forbidden, and official reports hard to come by.<sup>39</sup> Though these reliability problems were particular to the reporting of the time, different reliability problems attend the modern use of Hansard evidence. Even if this evidence can be seen as reliable, it was understood that the exclusionary rule might be justified simply because there is an “improbability of finding helpful guidance from Hansard” on specific interpretive questions.<sup>40</sup>

In the modern era, these same concerns resonate. *MediaQMI* throws doubt on the reliability of legislative history, raising the prospect of “spontaneous individual statements” being prized by courts over “the text enacted by the legislature, each word of which must be presumed to have been chosen with care.”<sup>41</sup> The concerns articulated in *MediaQMI* are also present in other recent cases. Both the Federal Court of Appeal and the Supreme Court have

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<sup>34</sup> *R v Wilson*, 2025 SCC 32 at para 34.

<sup>35</sup> *R v Carignan*, 2025 SCC 43, at para 58 [internal quotations omitted].

<sup>36</sup> *Reference re Firearms Act (Can)*, 2000 SCC 31 at para 17.

<sup>37</sup> *Supra* note 7 at paras 37–38.

<sup>38</sup> *Sharma*, *supra* note 9 at para 89 [emphasis in original]; see also *Heywood*, *supra* note 5 at 788–89.

<sup>39</sup> Kilgour, *supra* note 24 at 786; Gordon Bale, “Parliamentary Debates and Statutory Interpretation: Switching on the Light or Rummaging in the Ashcans of the Legislative Process” (1995) 74:1 *Can Bar Rev* 1 at 6.

<sup>40</sup> *Pepper*, *supra* note 18 at 633, *Browne-Wilkinson LJ*.

<sup>41</sup> *MediaQMI*, *supra* note 7 at para 37.

pointed to the inherent reliability problems of legislative history. As Justice Stratas emphasized in *Innovative Medicines Canada v. Canada (Attorney General)*, the inherently political nature of ministerial statements “offer little help” in interpretation, and “[t]his is especially so where statements are made in politically fraught or controversial circumstances.”<sup>42</sup> Joining Justice Stratas, the Supreme Court has emphasized that “[s]tatements of purpose in the legislative record may be rhetorical and imprecise” and, implying a worry about judicial cherry-picking, the Supreme Court clearly noted that “[d]econtextualized statements by members of Parliament can be poor indicators of parliamentary purpose.”<sup>43</sup> Additionally, in *Mohr v. National Hockey League*, the Federal Court (per Justice Rennie) identified “a substantive difference between committee proceedings that shed light on the evolution and legislative history of a law on the one hand and on the other hand the testimony of academics and public servants which may be aspirational, disputable or of arguable relevance.”<sup>44</sup> A failure to make this distinction might lead to the use of evidence, categorized as “legislative history,” that does not lead to an authentic determination of the legislature’s meaning. As we note below, this is a live concern.

Finally, another reason supporting the exclusionary principle pertains to the rule of law. In *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.*, Lord Diplock provided perhaps the most succinct description of this justification for the rule:

The acceptance of the rule of law as a constitutional principle requires that a citizen, before committing himself to any course of action, should be able to know in advance what are the legal consequences that will flow from it. Where those consequences are regulated by a statute the source of that knowledge is what the statute says.<sup>45</sup>

In her reasons in *MediaQMI*, Justice Côté encapsulates Lord Diplock’s reasoning succinctly in the context of the modern approach: allowing legislative history to contradict the text “would unduly compromise the reader’s right to rely on the letter of the law interpreted in its context.”<sup>46</sup>

Together, the justifications for the exclusionary rule still motivate statutory interpretation today, yielding concrete doctrinal guidance. Generally, the jurisprudence holds that legislative history can serve two interpretive functions. First, in *Canada 3000 Inc.*, Justice Binnie for a unanimous Supreme Court emphasized that “[t]hough of limited weight, Hansard evidence can assist in determining the background and purpose of legislation.”<sup>47</sup> This methodological point could be marshalled to narrow the use of legislative history to a distinct role in the modern approach.<sup>48</sup> Second, culminating with the Supreme Court’s decision in *MediaQMI*, the Court accepted that legislative history is particularly useful as a confirmatory device — a source of additional information to justify an interpretive result arrived at under the modern

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<sup>42</sup> 2022 FCA 210 at para 61.

<sup>43</sup> *Sharma*, *supra* note 9 at para 89.

<sup>44</sup> 2022 FCA 145 at para 63.

<sup>45</sup> [1975] 1 All ER 810 at 836.

<sup>46</sup> *MediaQMI*, *supra* note 7 at para 38, citing Pierre-André Côté, Stéphane Beaulac & Mathieu Devinat, *The Interpretation of Legislation in Canada*, 4th ed (Toronto: Carswell, 2011) at 467–68.

<sup>47</sup> *Canada 3000 Inc.*, *supra* note 6 at para 57.

<sup>48</sup> See e.g. *Felipa v Canada (Citizenship and Immigration)*, 2011 FCA 272 at para 46.

principle. Though the Supreme Court had previously used legislative history in this manner,<sup>49</sup> *MediaQMI* characterized this confirmatory device as “particularly useful.”<sup>50</sup>

## II. LEGISLATIVE HISTORY IN FOCUS

### A. DEFINING LEGISLATIVE HISTORY

The Supreme Court’s worries in recent cases are justified because improper use of legislative history could lead to distorted conclusions about the legislature’s intention. The wishes of the executive in introducing legislation, and the intention of Parliament expressed through its enactment of a subsequent legislative text, are neither interchangeable nor synonymous. This is the upshot of the discussion above, and the re-emphasis in the Supreme Court’s cases on the canonical statutory text.

Despite this emphasis, there remains limited judicial engagement with the potential frailties of legislative history that the Supreme Court identified in *Rizzo*. These frailties could impact the way courts should integrate legislative history into the determination of the legislature’s intent.

“Parliamentary evidence” refers to materials considered by courts that originate with a legislative body — such as Hansard debates and committee reports — as distinct from other materials that may be analyzed as a part of a broader category of “legislative history.” An example of the latter would be a press release from the sponsor of a bill, which is distinct from a Minister’s second reading speech. While there is no authoritative source of everything that “legislative history” might comprise,<sup>51</sup> the general consensus is that it includes materials that originate both within and outside of the legislature. For example, a 2020 decision of the Nova Scotia Supreme Court states that “[i]n many cases, information on the historical context of legislation will be available in the form of standard legislative history materials (commission reports, legislative background papers, committee reports, regulatory impact analysis statements, etc.).”<sup>52</sup> A larger range of sources offered by Ruth Sullivan was cited by the Tax Court of Canada in 2023:

Legislative History (this includes reports from royal commissions, law reform commissions and other similar bodies; ministerial studies; proposals and memoranda submitted to Cabinet; the observations of the Minister responsible for a bill; documents tabled or otherwise brought to the attention of the legislature during the legislative process, including explanatory notes; documents published by the government during the legislative process, such as briefing material or press releases; records of legislative debates and committee hearings; the record of motions to amend the bill; and regulatory impact analysis statements).<sup>53</sup>

Because the full legislative history of a scheme can include much more than just parliamentary evidence — materials developed through a portion of the process through

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<sup>49</sup> *Construction Gilles Paquette ltée v Entreprises Végo ltée*, 1997 CanLII 352 at para 20 (SCC).

<sup>50</sup> *MediaQMI*, *supra* note 7 at para 38.

<sup>51</sup> See Beaulac, *supra* note 4 at 289–90.

<sup>52</sup> *Beals v Nova Scotia (Attorney General)*, 2020 NSSC 60 at para 33.

<sup>53</sup> *Québecor Inc v The King*, 2023 TCC 142 at para 217, n 311.

which a bill becomes law<sup>54</sup> — courts must carefully consider the sources of legislative history on which they rely and the associated possibilities of distortion in seeking to establish legislative intent.

It should go without saying that a source of legislative history may contain incorrect information about the legislation itself. A notable example comes from a Minister’s press conference that contained inaccurate information and examples about a new law. As reported by the CBC, “[t]he aftermath left experts trying to sort out inconsistencies between the legislation and how [he] interpreted it for reporters.”<sup>55</sup> Another example comes from a government press release indicating a recently-passed law was not in effect given the lack of an application clause, whereas a corrected press release confirmed that the legislation had indeed come into force upon royal assent.<sup>56</sup> Certainly, a government press release on legislation or the sponsoring Minister’s comments on a bill might be evidence a court considers when looking at legislative history. Courts may well assume these sources would provide correct legislative information. However, mistakes happen, and it must again be stressed that legislative history evidence — even when originating from sources presumed to be authoritative — is nonetheless subject to testing against other evidence that might be before a court, the most important of which is the text of the enactment.

## B. NOT EVERYTHING “PARLIAMENT” IS PARLIAMENTARY

Within the ambit of legislative history come certain materials that may be associated with Parliament but are not parliamentary evidence in the purest sense because they do not originate with legislators. These would include items like legislative summaries prepared by the Library of Parliament (or an equivalent provincial body), backgrounders and technical papers prepared by governments, and other government documents that might support legislation, such as *Charter* Statements. These *may* form part of the relevant parliamentary history to the extent they are considered and engaged with by parliamentarians. However, they are in a category that is separate and apart from materials emanating from the legislative process such as committee reports. We address some of these sources below, in addition to the problem of incomplete legislative history.

### 1. LIBRARY OF PARLIAMENT LEGISLATIVE SUMMARIES

The Library of Parliament (Library) is an entity in the legislative branch that is distinct from the Senate and House of Commons and is *distinct from* government.<sup>57</sup> Its legislative

<sup>54</sup> See generally Andre Barnes, “The Legislative Process: From Government Policy to Proclamation” (1 May 2025) Library of Parliament HillStudies, Publication No 2025-31-E.

<sup>55</sup> Allison Crawford, “Peter MacKay’s Prostitution Law News Conference Sowed Confusion”, *CBC News* (18 June 2014), online: [perma.cc/4FFA-TYWU].

<sup>56</sup> Barb Dean-Simmons, “Bill C-208 is Just Weeks Old but Liberal say Amendments are Needed”, *The Chronicle Herald* (23 July 2021) at B1.

<sup>57</sup> The Library of Parliament’s legislative foundation is in the *Parliament of Canada Act*, RSC 1985, c P-1, ss 73–79. Note that the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 states in section 17 that “[t]here shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.” While “government” as a term can have many meanings, it is generally understood to refer to the executive branch of government — to the exclusion of institutions of the legislative and judicial branches. A further distinction that may be helpful is to consider the public sector, wherein one would find the courts and the agencies supporting Parliament, and the public service, which is narrower and wholly within the executive branch of the state.

summaries are prepared by employees of the Library *after* a bill is introduced and neither parliamentarians nor the government “sign off” on the summary. The emphasis on summaries being prepared *after* the introduction of bills is important. In the case of a government bill, the Library is *not* involved in the drafting of the legislation and has no knowledge of the specific discussions within the executive branch leading to the choices of policy or wording reflected in the legislation. In the case of non-government bills, the Library quite often plays an important role in helping parliamentarians develop their legislative policy; however, it is a role distinct from that of parliamentary counsel who draft the legislative text. It may be surprising to learn that the Library does not have access to the text of the bill prior to it being introduced in Parliament. The Library’s staff<sup>58</sup> quickly produces high-quality, factual, non-partisan expert legislative summaries. However, their legislative summaries are not tablets upon which one finds Parliament’s definitive statement of *its* own intent. As noted in the Library’s strategic plan, its vision is “[t]o be Parliament’s preferred and trusted source of information and knowledge.”<sup>59</sup> It serves Parliament and provides information to parliamentarians. It is not as though parliamentarians write the summary and hand it to the Library or as though the Library is the only source of information upon which legislators rely, including in respect of interpreting bills before them.

While legislative summaries serve as very useful tools for understanding bills, they must be considered by courts in their appropriate context when conducting a legislative history inquiry. Trouble arises, however, when courts appear to equate the Library’s summary with Parliament’s statement of its own intent. (Note here that legislation may include a summary statement — this is standard for federal bills, though procedural authorities note that the summary is not part of the bill itself.<sup>60</sup>)

Judicial pronouncements in this regard often blur the line. For example, an Ontario Court of Appeal decision includes the line “[t]he Legislative Summary of Bill C-10 reflects Parliament’s awareness of its obligation under international law.”<sup>61</sup> While the public sector employees of the Library who wrote the summary were certainly aware of Parliament’s obligations under international law, the summary cannot be taken to speak for what parliamentarians knew or did not know. Along similar lines, a 2019 Newfoundland and Labrador Court of Appeal decision states “[i]n this case, clause 2.1.6 of The Legislative Summary of Bill C-13 referred to above directly states Parliament’s intention that the new legislation is for the purpose of allowing police officers to more quickly investigate past or possible future offences.”<sup>62</sup> On its face, the court is using material not prepared by parliamentarians as a statement of Parliament’s intent.

With great respect and appreciation both for the Library of Parliament and the courts involved, the Library’s summary of legislation should not be considered by courts as an

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<sup>58</sup> One of the authors of this paper is a former Library of Parliament Analyst who contributed to legislative summaries.

<sup>59</sup> Library of Parliament, *Strategic Plan 2023–2028* (Ottawa) online: [perma.cc/UT3Y-JK3Q].

<sup>60</sup> *House of Commons Procedure and Practice*, 3rd ed by Marc Bosc & André Gagnon (Ottawa: House of Commons, 2017), online: [perma.cc/X5NH-W5UV] (“[t]he purpose of the summary is to contribute to a better understanding of the contents of the bill, of which it is not a part. For this reason, it appears separately at the beginning of the bill and is not subject to amendment”) [*Procedure and Practice*].

<sup>61</sup> *Tracy v Iran (Information and Security)*, 2017 ONCA 549 at para 53.

<sup>62</sup> *Re: section 487.02 of the Criminal Code*, 2019 NLCA 6 at para 44.

authoritative statement of *Parliament's* intent any more than the courts would be prepared to accept the summary of a bill found on a law firm's website or a professor's blog as being a definitive declaration of the legislator's intent. The judicial inquiry must go further: while the Library's understanding of a text may well align with what legislators intend, this cannot be taken for granted and must be tested against other evidence.

Further, some judicial pronouncements reflect other misunderstandings about the Library that are relevant to a consideration of legislative history. For example, a 2020 British Columbia Provincial Court decision introduced a legislative summary from the Library with the words “[a]lthough of marginal weight in determining Parliament's intent, the legislative summary issued by the Federal Government”<sup>63</sup> — reflecting a misunderstanding about the fact that the Library of Parliament (as a legislative branch actor) is independent from the executive. This conflation of the Library of Parliament and the government is also found in decisions of the Ontario Superior Court of Justice,<sup>64</sup> one of which incorrectly attributes the Library's legislative summary as being prepared by the Department of Justice.<sup>65</sup> To avoid confusion, it may be useful for parties to assist the court by contextualizing these documents. For example:

The Crown cautions this Court about placing too much reliance on “cherry-picked” (my term) portions of Hansard, and the Crown observes that the Legislative Summary of Bill C-49 referred to above is not a Ministry of Justice document, was prepared by a researcher on behalf of Parliament's library services, and is not reliable evidence of Parliament's intention underlying the impugned provisions.<sup>66</sup>

Of course, in some cases a party may be perfectly happy to point to the Library's legislative summary, perhaps without offering any such caution. In all cases, courts must inquire as to the nature of the evidence before them. Simply put, just because there are many sources saying X, does not mean Parliament has itself said X. Thus, leaps such as one found in a 2025 Manitoba Provincial Court decision that reads in part “[l]egislators intentionally crafted section 320.15(1) to reflect this. The legislative summaries and the Backgrounder all support this fact,”<sup>67</sup> raise questions. The legislative summary was drafted by the Library of Parliament and, as will be discussed in the section below, the backgrounder was also not prepared by legislators, but rather by the executive. Is the court drawing a direct line between legislators' wording in statute and two documents not prepared by legislators?

## 2. BACKGROUNDERS AND TECHNICAL PAPERS

A government may produce materials to support the introduction of legislation — often these take the form of backgrounders or technical papers. While these are quite likely to be *tabled* in Parliament, this does not give them some sort of seal of parliamentary approval. Tabling something simply means it has been deposited with parliamentary officials and is available for inspection by parliamentarians; it does not guarantee any legislator has read it.

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<sup>63</sup> *R v Roland*, 2020 BCPC 130 at para 16.

<sup>64</sup> See e.g. *R v Otto*, 2019 ONSC 2473 at para 22.

<sup>65</sup> *R v States*, 2015 ONSC 3265 at para 72, n 35.

<sup>66</sup> *R v D'Souza*, 2016 ONSC 2749 at para 63.

<sup>67</sup> *R v Zeemel*, 2025 MBPC 51 at para 47.

Thousands of pages of documents are tabled annually at the federal level,<sup>68</sup> and at the provincial level, all manner of things have been tabled — including, perhaps most notoriously, a hamburger.<sup>69</sup>

Put simply, a judicial pronouncement such as “Parliament was aware at the time the legislation was passed that the Department of Finance considered the enhanced deduction to apply to [certain transactions]”<sup>70</sup> —based on a white paper being tabled — ought to be considered in light of the fact that parliamentarians may have never seen the document. The conclusion in that case, “[t]hus Parliament may be presumed to have intended the effect described in the White Paper, and more particularly in the explanatory notes,”<sup>71</sup> can also be questioned. Does one assume that parliamentarians voting in favour of the legislative text agreed with the explanatory notes of a white paper?

A background or technical paper must be reconciled with the legislative text that results from the parliamentary process. There may be situations where the content of government supporting materials does not reflect amendments adopted by parliamentarians. An example of this may be seen in the case of former Bill S-3 introduced under the title *An Act to amend the Indian Act (elimination of sex-based inequities in registration)*<sup>72</sup> and accompanied by an extensive background. <sup>73</sup> It was significantly amended by the Senate, including to change its title to: *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur général)*.<sup>74</sup> Information on the bill as it existed in a form prior to its final passage is readily available online; major changes were made at the tail end of the legislative process when the bill — passed by the Senate and House, but with differences in text — was further modified through the “message” process.<sup>75</sup>

In other words, one must correctly identify the provenance of a document and check its date. In respect of provenance, consider a 2023 decision from the Saskatchewan Court of King’s Bench that cites “Parliament’s intent as outlined in the Background.”<sup>76</sup> Parliament did not write the background in that case, it was prepared by the Department of Justice and reflected the executive’s intention in preparing the legislation (distinct from any intentions Parliament may have had in adopting the legislation, with or without any amendments).

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<sup>68</sup> For a sense of how many documents are required to be tabled, see House of Commons, *List of Reports and Returns*, 45-1 (26 May 2025) online: [perma.cc/8XV2-CRW6]. This list includes only those items required to be tabled in the House of Commons under a statutory provision and therefore does not include anything tabled by the government of its own volition or items tabled with the consent of the House.

<sup>69</sup> Heather Close, “Stranger Things: Peculiar Sessional Papers in Alberta” (2019) 42:1 Can Parliamentary Rev 60.

<sup>70</sup> *Canada v Ast Estate (CA)*, [1997] 3 FC 86 at para 28 (CA).

<sup>71</sup> *Ibid.*

<sup>72</sup> 1st Session, 42nd Parl, 2016 (assented to 12 December 2017), SC 2017, c 25.

<sup>73</sup> Government of Canada, News Release, “The Government of Canada Introduces a Bill to Eliminate known Sex-Based Inequities in the Indian Act” (25 October 2016), online: [perma.cc/Q2LG-XHW3].

<sup>74</sup> See Library of Parliament, *Legislative Summery of Bill S-3*, by Norah Kielland & Marlisa Tiedemann, Publication No 42-1-S3-E (Ottawa: Library of Parliament, 22 February 2017).

<sup>75</sup> See discussion of Bill S-3 in Guillermo Renna, “Bicameral Conflict Resolution: Developments in the 42nd Parliament” (2021) 44:1 Can Parliamentary Rev 19.

<sup>76</sup> *R v Mackenzie Wright*, 2023 SKKB 236 at para 152.

In respect of date, a general rule of thumb might be to note that if a backgrounder on a new bill is published at the same time as the legislation is first introduced in Parliament, it is extremely unlikely (absent, for example, time travel) for it to reflect a parliamentary pronouncement on the legislation, as Parliament is only then seized of the matter for the first time. Of course, if legislators subsequently engage with the document (such as citing it with approval during debate) other inferences could be drawn. Other exceptions exist, such as when legislation is expressly introduced in response to a committee report that has been concurred in by both Houses of Parliament. On the flip side, a backgrounder that is prepared *after* parliamentary consideration of the bill is completed might reflect an interpretation of what Parliament enacted rather than Parliament's interpretation of what it was enacting. This is another example of where care must be taken with dates and sources.

A recent *ex post* legislative backgrounder of note relates to criminal justice legislation that lacked a transitional provision clarifying whether a certain amendment would have retrospective effect. Upon its enactment there were questions and courts even within the same province were split on whether the change was prospective or retrospective.<sup>77</sup> Ultimately, the matter was resolved by the Supreme Court of Canada.<sup>78</sup> While one backgrounder addressed the issue directly, a court was smart to observe that “footnotes added to a backgrounder after the bill received Royal assent to try to stamp out the failure to include any transitional provisions on the temporal [effect] of these provisions, are due even less weight in interpreting the collective will of Parliament.”<sup>79</sup> Another court further observed that “the Department of Justice provides no basis for its claim to know Parliament's intent. As such, the backgrounder must be treated cautiously in any assessment of the temporal application.”<sup>80</sup>

In short, courts need to be careful when making the leap from background document of the executive to parliamentary intent. Consider a statement such as: “[i]n February 1995, the Department of [F]inance tabled in Parliament a ‘white paper’ intended to bring up to date various federal financial institutions and to explain the various modification proposed to several statutes,” followed by the court's conclusion that “[t]he intent of the legislator is clearly expressed,”<sup>81</sup> referring to that white paper. While the white paper was tabled in February,<sup>82</sup> the resulting bill was not introduced until June,<sup>83</sup> and — as noted by committee witnesses that summer — the two were not coextensive.<sup>84</sup> Indeed, the government had

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<sup>77</sup> Michelle I Bertrand et al, “‘We Have Centuries of Work Undone by a Few Bone-Heads’: A Review of Jury History, a Present Snapshot of Crown and Defence Counsel Perspectives on Bill C-75's Elimination of Peremptory Challenges, and Representativeness Issues” (2020) 43:1 Man LJ 111 at 113.

<sup>78</sup> *R v Chouhan*, 2021 SCC 26.

<sup>79</sup> *R v Kozak*, 2019 ONCJ 657 at para 7.

<sup>80</sup> *R v Kozak*, 2019 ONSC 5979 at para 72.

<sup>81</sup> *Kansa General International Insurance Co v Alfieri*, 2004 CanLII 21472 at para 40 (QCCS).

<sup>82</sup> *House of Commons Debates*, 35-1, No 149 (9 February 1995) at 9377 (Hon Douglas Peters).

<sup>83</sup> Bill C-100, *An Act to Amend, Enact and Repeal Certain Laws Relating to Financial Institutions*, 1st Sess, 35th Parl, 1995.

<sup>84</sup> “Bill C-100 implements many of the measures outlined in the white paper entitled ‘Enhancing the Safety and Soundness of the Canadian Financial System.’ Bill C-100 essentially makes two changes to that white paper. The government has decided not to proceed with restrictions on stacking of deposits in affiliated deposit-taking institutions and it has decided to give further study to its proposal concerning the policyholder protection board.” (House of Commons, Standing Committee on Finance, *Evidence*, 35-1, No 151 (15 August 1995) at 1335–40 (Professor Jack Carr)).

published the white paper to consult industry and considered their feedback before tabling the final legislation.<sup>85</sup>

### 3. CHARTER STATEMENTS AND CLAUSE-BY-CLAUSE BINDERS

Along the lines above, it is important to recall other documents that might be placed before Parliament but are executive in origin, including *Charter* Statements and clause-by-clause binders.

A *Charter* Statement is prepared under the *Department of Justice Act* for government legislation and is required to be tabled upon introduction. The *Act* is clear that “[t]he purpose of the statement is to inform members of the Senate and the House of Commons as well as the public of those potential effects.”<sup>86</sup> While this statutory obligation is relatively new, the government began tabling *Charter* Statements prior to the legislative obligation.<sup>87</sup> While some courts have confused the origin of *Charter* Statements — such as one judge indicating it was the federal legislator’s accompanying document,<sup>88</sup> and another referencing “Parliament’s own *Charter* Statement,”<sup>89</sup> — other courts have been much more nuanced. For example:

I acknowledge that the *Charter Statement* filed by the Minister of Justice early in 2018 stated ... However, I note that the document itself states that it was intended merely “to help inform” the subsequent Parliamentary debate on the Bill, and to outline its anticipated compliance with the *Charter of Rights and Freedoms*. I must be cautious in how much weight I may place upon it.

I conclude that I cannot place any weight upon the document. The document may have been a statement of ministerial intent at the time it was tabled, but it bears no relation to the section that Parliament passed.<sup>90</sup>

Contrast this with a statement from a different court: “Further, I find that it was the intent of the legislature to affect those rights, as evidence[d] by the *Charter* Statement.”<sup>91</sup> This reflects an understanding that the legislature sanctioned the *Charter* Statement. Even if the legislation was passed without amendment, at a minimum, one would need to find discussion of the *Charter* Statement in Parliament to draw a link between the two; that search could yield unexpected results.<sup>92</sup>

Along similar lines, there seems to be some confusion about where so-called “clause-by-clause binders” originate. As explained by the Privy Council Office, “briefing books (also

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<sup>85</sup> “Bill C-100, An Act to Amend, Enact and Repeal Certain Laws Relating to Financial Institutions”, 2nd reading, *House of Commons Debates*, 35-1, No 264 (24 November 1995) at 16763 (Hon Douglas Peters).

<sup>86</sup> *Department of Justice Act*, RSC 1985, c J-2, s 4.2(2).

<sup>87</sup> Charlie Feldman, “Preliminary Observations on Parliamentary and Judicial use of *Charter* Statements” (2020) 13 JPPL 587.

<sup>88</sup> *R v LeBlanc*, 2019 NBQB 241 at para 34.

<sup>89</sup> *R v Levaillant*, 2019 ABQB 837 at para 11.

<sup>90</sup> *R v Tunnillie*, 2020 NUCJ 26 at paras 31–32 [footnotes omitted].

<sup>91</sup> *R v Kebede*, 2019 ABQB 858 at para 37.

<sup>92</sup> A notable case involves a former judge turned senator likening a particular *Charter* Statement to “toilet paper”: see *Debates of the Senate*, 42-1, vol 150, no 250 (24 November 2018) at 6899 (Hon Murray Sinclair).

known as clause-by-clause books) [are] for use by the minister or parliamentary secretary and by the members of the parliamentary committees that review the bill.”<sup>93</sup> The documents are prepared by the executive. Yet, there are findings that “[w]hen Parliament introduced the new IRPA, one of the objects of the Act was to strengthen inadmissibility as seen in the clause by clause analysis prepared for IRPA,”<sup>94</sup> or “[t]he Senate briefing book’s clause-by-clause analysis sets out the following comment...,”<sup>95</sup> or “[t]o confirm Parliament’s intent, the Panel refers to the Clause-by-Clause Description.”<sup>96</sup>

While clause-by-clause binders can be incredibly useful for understanding the *government’s* intent in advancing legislation, they are not necessarily indicative of anything on the parliamentary side. For example, binders may not be updated when the legislation is amended.<sup>97</sup> They might also not be available to all members, including those who ask.<sup>98</sup> An assumption that every parliamentarian has seen (or has access to) the analysis so as to imply it represents parliamentary intention in some way is questionable reasoning.

#### 4. INCOMPLETE LEGISLATIVE HISTORY

In his milestone work on provincial Hansard use by Nova Scotia courts, Graham Steele offers several important reflections on the need for courts to tread carefully that are applicable to the judicial use of Hansard from other legislatures.<sup>99</sup> First, says Steele, Hansard may have errors that have gone uncorrected. Second, it may not capture the sense of what was being said as text can fail to convey emotion and does not capture non-verbal communication. Third, Hansard renders oral speech, and the choices of Hansard staff to punctuate and paragraph can impact meaning and understanding. Fourth, speeches are made with a political purpose, which aligns with the justifications underpinning the recent comments in *Sharma* and the Federal Court of Appeal on their use. Fifth, no one person “speaks” for the legislature which, as Steele explains, does not itself have an “intention.”

While Steele’s cautions focus primarily on the issue of rendering speech to text in a form not open to significant correction by the actors involved — and where other dynamics are at play — there are more particular reasons within the statutory interpretation context where courts can be led astray when using legislative history.

Debates on bills are only one portion of the parliamentary record, and research for a bill’s legislative history should not be limited to a Hansard search of debate *on a bill*. Nor should a

<sup>93</sup> Canada, Privy Council Office, *Guide to Making Federal Acts and Regulations*, 2nd ed, Catalogue No J2-8/2001E-IN (Ottawa: Privy Council Office, 2001) at 113.

<sup>94</sup> *Wang v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1059 at para 43.

<sup>95</sup> *Frost (Re)*, 2021 NSSC 296 at para 25.

<sup>96</sup> *100002734044 (Re)*, 2016 CanLII 101167 at “The Legislation” (CA VRAB).

<sup>97</sup> “For the record, there has been a little bit of confusion about the numbering of clauses in this bill. That is because the Department of Justice binder, the clause-by-clause binder sent to us, contained the original text of the bill as presented to the House of Commons. It was [later] amended” (Senate of Canada, Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, *Evidence*, 40-3, No 20 (9 February 2011) (Joan Fraser) online: [perma.cc/5PWD-GHR2]).

<sup>98</sup> “I have a comment. The Department of Defence has never made the clause-by-clause binder available to us so we could work on our amendments and to fully understand the meaning. We had a relatively brief presentation. Normally, we are provided with a detailed binder. We have asked for it many times, but we have never received it.” (Senate of Canada, Proceedings of the Standing Senate Committee on National Security and Defence, *Evidence*, 42-1, No 44 (28 May 2019) (Senator Boisvenu)).

<sup>99</sup> Steele, *supra* note 15 at 7–8.

legislative history search, in the federal context, be limited to looking at Chamber debate in only one House of Parliament. What follows are examples of where each approach may lead to incorrect inferences in relation to the object of interpretation: the intent of the legislature, expressed in the text.

a. The Perils of Incomplete Legislative History – a Case Study: Bill C-54

The events surrounding the parliamentary consideration of Bill C-54 of the 41st Parliament, 1st Session (the *Not Criminally Responsible Reform Act*) illustrate well the perils of partial Hansard reading. At the beginning of the second reading debate on the bill, the Minister of Justice was asked about the evidentiary basis for the legislation and told the House as follows on 1 March 2013:

There are statistics, and I would be glad to share the report with the hon. member. Here are some of the interesting facts about those who are not criminally responsible. A little over 27% of individuals found not criminally responsible have had a past finding of not criminally responsible; 38% of those found not criminally responsible and accused of a sex offence had at least one prior NCR finding; 27% of those accused of attempted murder had at least one NCR finding; and, 19% of those accused of murder or homicide had at least one prior finding of not criminally responsible.<sup>100</sup>

These same statistics find expression in a later second reading speech from the Minister of Natural Resources:

Mr. Speaker, I would like to cite a few statistics relating to recidivism and then make a general point about stigmatization. It is very important that when we talk about what the risk to the public is, we try to get as close as we can to the facts. The facts are: 27.3% of not criminally responsible accused have a past finding of NCR; 38.1% of NCR accused of a sexual offence had at least one prior NCR finding; 27.7% of NCR accused of attempted murder had at least one prior NCR finding; and 19% of NCR accused of murder or homicide had at least one prior NCR finding. Those facts have to be brought into the analytical picture so we get a more objective understanding of what is in fact going on.<sup>101</sup>

These same statistics were also repeated at committee, including by a Member of Parliament<sup>102</sup> and a witness — the president of the Toronto Police Association.<sup>103</sup>

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<sup>100</sup> “Bill C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder)” 2nd reading, *House of Commons Debates*, 41-1, No 217 (1 March 2013) at 1020 (Hon Rob Nicholson) online: [perma.cc/T3JQ-PNRG].

<sup>101</sup> “Bill C-54, An Act to amend the Criminal Code and the National Defence Act (mental disorder)” 2nd reading, *House of Commons Debates*, 41-1, No 256 (27 May 2013) at 2030 (Hon Joe Oliver) online: [perma.cc/3Y5S-YPTB].

<sup>102</sup> House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 41-1, No 076 (5 June 2013) at 1719–20 (Scott Armstrong) online: [perma.cc/AH5L-JMBC].

<sup>103</sup> House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 41-1, No 078 (12 June 2013) at 1655 (Mike McCormack) online: [perma.cc/VS9P-V3K6].

It would be understandable for a court looking at social facts underpinning the legislation to rely on these interventions and assume the statistics were correct; however, they were not, as revealed in other portions of the parliamentary record.

The statistics came from research prepared for the Department of Justice. Unfortunately, the researchers made a coding error that resulted in incorrect findings. The matter was reported in the press in June 2013 when it was revealed that the Minister's office had an updated report as of March.<sup>104</sup> As explained by Global News, "[t]he original report said 38.1 per cent of sex offenders found not criminally responsible and accused of a sex offence had at least one prior NCR finding; that number was changed in the March report to 9.5 per cent."<sup>105</sup> Similarly, the 27.7 percent figure for NCR accused having a past NCR finding was revised to 4.6 percent. Certainly, one can appreciate that 38.1 percent and 27.7 percent are a far cry from 9.5 percent and 4.6 percent, respectively.

In the House of Commons, the matter was raised as a question of privilege.<sup>106</sup> That is, one MP alleged that the House had been misled and argued that the matter was a contempt of Parliament.<sup>107</sup> The Minister of Justice rose to clarify the timeline of events and suggested that the speech from the Minister of Natural Resources was based on government materials that were regrettably incorrect but that the mistake was not of the other minister's own doing.<sup>108</sup> The Minister of Justice at that time sought — and received — permission of the House to table the correct report.

As a member noted in a further question of privilege, the correct report was tabled in one language (English) and, quite importantly, it may not have been shared with MPs on the committee that studied the bill and reported it to the House.<sup>109</sup> He noted that although the correct materials were now before the House, the incorrect information would remain permanently on Hansard, where it remains today without any annotation.

While C-54 did not complete its legislative journey before prorogation of the 1st Session of the 41st Parliament, it was reintroduced as Bill C-14 in the subsequent session. When the government introduced new Bill C-14 (which duplicated the text of previous Bill C-54), it was deemed passed at all stages completed in the previous session, and thus immediately sent to the Senate.<sup>110</sup> It subsequently received royal assent.<sup>111</sup> If asked to compile a legislative history of the legislation enacted (Bill C-14), one would quickly find the introductory speeches of the predecessor bill (Bill C-54); however, one would not nearly as easily find the question of privilege debate in which the statistics cited are challenged and eventually

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<sup>104</sup> Laura Stone, "MPs Studying Wrong Data About Not Criminally Responsible Bill: Researchers", *Global News* (11 June 2013), online: [perma.cc/6FY5-AB8F].

<sup>105</sup> *Ibid.*

<sup>106</sup> *House of Commons Debates*, 41-1, No 268 (12 June 2013) at 1605–10 (Ted Hsu) online: [perma.cc/XP6N-P6DU].

<sup>107</sup> *House of Commons Debates*, 41-1, No 269 (13 June 2013) at 1515–20 (Nathan Cullen) online: [perma.cc/PA7C-9ESF].

<sup>108</sup> *House of Commons Debates*, 41-1, No 269 (13 June 2013) at 1830–35 (Hon Rob Nicholson) online: [perma.cc/BE8S-UPYG].

<sup>109</sup> *House of Commons Debates*, 41-1, No 271 (17 June 2013) at 2020–40 (Ted Hsu) online: [perma.cc/N278-UWN4].

<sup>110</sup> *House of Commons Debates*, 42-1, No 23 (25 November 2013) at 1505–10 (Hon Steven Blaney) online: [perma.cc/97QJ-NLYE].

<sup>111</sup> *Not Criminally Responsible Reform Act*, SC 2014, c 6.

corrected; again, the initial Hansard record with those inaccurate speeches remains untouched.

b. The Perils of Incomplete Legislative History – Other Cases

Incomplete legislative history may result not only from a limited reading of bill debates (as opposed to discussions of a bill that may occur during Question Period, for example) but from a failure to research non-debate parliamentary materials, such as responses to petitions on bills or written Order Paper questions. For example, in 2014 an MP used the written question procedure to elicit an explanation of every provision of a coming-into-force scheme of a bill.<sup>112</sup> For the provisions that came into force on royal assent, the answer distinguishes between changes that “are not changing the *status quo* and are merely reflective of the current situation or practice” and changes that are otherwise coming into force on assent because they require no implementation period.<sup>113</sup> From that information, one could, for example, have an indication of the *government’s* understanding of whether a certain amendment was thought of as reflecting current practice or changing it.<sup>114</sup>

Further, it is important to recall that there are two Houses of Parliament federally. While the Supreme Court has, in recent years, cited House of Commons debates more than Senate debates, it is more likely to cite Senate committee reports than those from the House of Commons.<sup>115</sup> Compiling and canvassing a complete legislative history requires research beyond reading speeches at one stage from one House of Parliament, as there may be more than meets the eye in the second House.

Consider, for example, a Senate committee report on a House bill containing the observation that “[t]he bill’s sponsor ... told your committee that the exclusion of various occupations from the preamble to the bill was an accidental oversight.”<sup>116</sup> The committee did not amend the bill, despite this observation. A similar matter arose in another Senate committee discussion where the House sponsor of a bill admitted a mistake was made in the wording of an amendment that was adopted to the substantive text of Bill C-394 of the 41st Parliament.

As introduced, Bill C-394 enacted a new offence for recruiting members for a criminal organization. A House of Commons committee amended the chapeau of the provision as follows:

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<sup>112</sup> House of Commons, “Order/Address of the House of Commons Q-531” by Stéphane Dion (Saint-Laurent–Cartierville), Sessional Paper 41-2, No 8555-412-531 (15 September 2014) online: [perma.cc/M24Y-C8WA].

<sup>113</sup> *Ibid* at 1.

<sup>114</sup> *Ibid*. The emphasis on government here is necessary as written questions can only be answered by the Government and, in this case, the answer was tabled after the legislation had received royal assent.

<sup>115</sup> Charlie Feldman, “Pinpointing Parliament: Supreme Court Citation of Parliamentary Evidence, 2010–2020” (2022) 45:4 *Can Parliamentary Rev* 21.

<sup>116</sup> Senate of Canada, Standing Committee on National Security and Defence, *Eighteenth Report* (11 June 2018) (Chair: Gwen Boniface) online: [perma.cc/UJ4Q-M8P4].

Chapeau as introduced	Chapeau as amended (changes underlined)
467.111 Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this Act or any other Act of Parliament, recruits, solicits, encourages or invites a person to join a criminal organization ...	467.111 Every person who, for the purpose of enhancing the ability of a criminal organization to facilitate or commit an indictable offence under this Act or any other Act of Parliament, recruits, solicits, encourages, <u>coerces</u> or invites a person to join <u>the</u> criminal organization ...

The remainder of the provision was left unchanged:

- (a) in the case where the person recruited, solicited, encouraged or invited is under 18 years of age, to imprisonment for a term not exceeding five years, and to a minimum punishment of imprisonment for a term of six months; and
- (b) in any other case, to imprisonment for a term not exceeding five years.<sup>117</sup>

Eagle eyes may notice that the addition of “coerces” in the chapeau is not mirrored by a corresponding addition in paragraph (a). The effect is that, strictly speaking, if one recruited, solicited, encouraged, or invited someone to join a gang, a minimum sentence of six months’ imprisonment would apply but this would not apply in the case of coercion — though perhaps the same conduct could be captured by the other language of the provision.

The Senate committee studying the bill as passed by the House of Commons identified concerns about the missing word (along with other potential improvements). The sponsor of the legislation conceded, “[f]or consistency’s sake, should that word be added at some point in time? Absolutely.”<sup>118</sup> As the committee reported back to the Senate in an observation, while it “believes” that the word should be added, it understood that because the bill’s sponsor was elevated to a parliamentary secretary position, any amendments sent back to the House would fall into a procedural void.<sup>119</sup> It thus decided that it was better to proceed with an imperfect bill rather than risk it not passing at all. A decade later, the provision remains unchanged. If one looked only at the House discussions, this important Senate observation would go unnoticed. Similarly, assuming the Senate had no concerns with the bill because it did not adopt amendments (ignoring the observations of its committee) could lead to improper inferences.

### c. The Perils of Incomplete Legislative History – Inaction

Sometimes courts inquire into parliamentary decisions not to proceed in a certain way — such as the defeat of a proposed amendment to a bill.<sup>120</sup> This has even included looking at a

<sup>117</sup> *Criminal Code*, RSC 1985, c C-46, s 467.111(a)–(b).

<sup>118</sup> Senate of Canada, Standing Senate Committee on Legal and Constitutional Affairs, *Evidence*, 41-2, No 11 (28 May 2014) at 11:10 (Mr Gill).

<sup>119</sup> Senate of Canada, Standing Committee on Legal and Constitutional Affairs, *Ninth Report* (29 May 2014) (Chair: Bob Runciman) online: [perma.cc/M382-KZFP].

<sup>120</sup> *AB v Canada (Attorney General)*, 2017 ONSC 3759 at paras 46–47.

proposed amendment defeated when the *Charter of Rights and Freedoms* was under consideration by a joint committee of Parliament.<sup>121</sup>

Very limited inferences should be drawn from a decision within the parliamentary ecosystem not to proceed in a particular way, especially on legislative amendments. The biggest and perhaps most obvious reason for this is to recall that the majority of amendments are considered by a committee — a subgroup of parliamentarians — in only one House of Parliament. Taking that decision as evidence of the collective intention of both Houses of Parliament is quite often a bridge too far, particularly if the same matter was not considered in some way by the full complement of parliamentarians.

Importantly, one House may not be aware of the deliberations of the other and their work may not be in *seriatim*. The Senate, for example, frequently tasks a committee with pre-studying a bill in advance of its arrival from the Commons into the Senate, meaning that it is possible for both the House and Senate to be studying the same item at the same time.<sup>122</sup> As an example of where this may produce odd results for piecing together who knew what and when, consider that on the day a Senate committee reviewing a bill implementing an international tax agreement reported that “[t]he Committee was told that the Canada Revenue Agency is seeking to identify the number of people that would be affected by this agreement,”<sup>123</sup> the bill was also undergoing clause-by-clause review in a House committee. Were the House members aware that the Senate had been told there was uncertainty about the number of individuals the agreement would impact? Assuming one House made a decision with the knowledge of the events in the other House — particularly a committee action — may be a very big assumption.

Further, members might vote no on an amendment for reasons of form over substance — such as not having adequate notice of the amendment to study its text. Relatedly, a member might withdraw an amendment not necessarily because they have changed their mind on the substance. For example, perhaps they secured a concession on another portion of a bill and are abandoning an amendment as part of the horse-trading of politics. In short, very little should be inferred from the fact that something did not proceed in a particular way.

Judicial consideration of what might otherwise be thought of as “parliamentary inaction” is also seen in relation to bills. Consider, for example, a comment from the Federal Court in respect of a private member’s bill (PMB): “[i]nteresting, this bill died at first reading and was not discussed further.”<sup>124</sup> With respect, the story is not interesting at all from a parliamentary procedure standpoint: there is a lottery for determining whose PMBs can proceed, and the member in question did not fare well so their item could not come up for debate, and they would have known this at the moment of introducing the bill. It is important to recall that parliamentary procedure impacts parliamentary results, and often in ways that make inferences from inaction problematic. For example, the Supreme Court commented in

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<sup>121</sup> *Deutch v Law Society of Upper Canada Legal Aid Fund, Lawson and Legge*, 1985 CanLII 5979 at 173 (ON SCDC).

<sup>122</sup> A list of pre-studied bills is maintained by the Library of Parliament [perma.cc/FDB5-AASD].

<sup>123</sup> Senate of Canada, *Report on the Subject-Matter of Bill C-31, an Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11, 2014 and Other Measures: Standing Senate Committee on National Finance* (May 2014) (Chair: Hon Joseph A Day) at 15.

<sup>124</sup> *Schmidt v Canada (Attorney General)*, 2016 FC 269 at para 273.

passing that “[b]etween 1991 and 2010, the House of Commons and its committees debated no less than six private member’s bills seeking to decriminalize assisted suicide. None was passed.”<sup>125</sup> The fact that Parliament did not enact one of these bills should not be taken as a sign that Parliament did not want decriminalization; were the bills defeated or did they end their legislative journeys by efflux of time? Further, the procedure for PMBs changed in that period — was this considered? Perhaps Parliament wanted to decriminalize as a policy matter but disagreed on the specifics and was unable to amend one of these bills in a way that was satisfactory. As an extreme example, parliamentary disagreement on the particulars of a bill once manifested in that bill being stripped of all its clauses by a committee, and the House of Commons could not agree to put any of them back in — there was no agreement on the content of the bill but there was no outright defeat of it, either.<sup>126</sup>

As a somewhat far-fetched example of risks from reading too much into parliamentary “inaction,” consider that the Canadian Civil Liberties Association once suggested that a bill’s preamble be amended to emphasize that those applying the legislative scheme were to uphold the *Charter* in doing so.<sup>127</sup> An MP tried moving an amendment in this regard, and it was procedurally rejected by the committee chair based on a long-standing procedural rule about amendments to preambles.<sup>128</sup> The member accepted the ruling and did not attempt to overturn the chair’s decision.<sup>129</sup> It would be preposterous to conclude in any way from this that Parliament did not want those applying the legislation to do so in a *Charter* compliant way.

As an extremely far-fetched example of reading too much into parliamentary “inaction,” consider provisions that have never been repealed. At the time of this writing in 2025, section 70 of the *Pension Act* reads: “Any pension that was being paid on March 1, 1961 to or in respect of members of the forces that served in the Northwest Rebellion shall continue to be paid at the rates set out in Schedules I and II.”<sup>130</sup> The Northwest Rebellion took place in 1885; one should not read in to this provision remaining in the statute book that Parliament believes certain individuals walk among us who are well over 140 years in age and with first-hand memories of a their involvement in a pivotal moment in Canadian history.

### III. METHODOLOGY

While the use of legislative history (discussed in Part I) and its potential misuse (discussed in Part II) are important, the big question has thus far gone unanswered: what is a court to do when presented with these materials? Every interpretive situation is different, but there are general practices that these examples — and the original concerns underlying the exclusionary rule — might recommend. If the goal is to discover the intention of the legislature, then methodological rules should be deployed that focus judicial attention on only

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<sup>125</sup> *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 6.

<sup>126</sup> “Bill C-284, An Act to amend the Canada Student Financial Assistance Act (Canada access grants)”, *House of Commons Debates*, 39-2, No 021 (21 November 2007) at 1179 (Hon Peter Milliken).

<sup>127</sup> House of Commons, Standing Committee on Public Safety and National Security, *Evidence*, 42-1, No 076 (5 October 2017) at 0845 (Brenda McPhail).

<sup>128</sup> House of Commons, Standing Committee on Public Safety and National Security, *Evidence*, 42-1, No 080 (26 October 2017) at 0910 (Pam Damoff).

<sup>129</sup> *Procedure and Practice*, *supra* note 60 at ch 20.

<sup>130</sup> *Pension Act*, RSC 1985, c P-6, s 70.

the most probative sources of legislative history — and only then, in appropriate circumstances.

### A. A BRIEF NOTE ON METHODOLOGY AND PRAGMATISM

The use of legislative history must be integrated into a coherent methodology for the interpretation of statutes. In judicial interpretation, methodology imposes a degree of objectivity so that a particular interpretation “can be measured against a set of norms that transcend the particular vantage point of the person offering the interpretation.”<sup>131</sup> These norms, which Owen Fiss calls “disciplining rules,” serve to “constrain the interpreter and constitute the standards by which the correctness of the interpretation is to be judged.”<sup>132</sup> In Canada, Justice Malcolm Rowe has written about the importance of methodology. For Justice Rowe, disciplining rules come in the form of a “structured and deliberate” methodology.<sup>133</sup> The structured methodology “focuses and guides analysis” with the consequence that “certain arguments and rationalizations become unavailable.”<sup>134</sup> For Justice Rowe, a structured and deliberate methodology explicitly and self-consciously pre-commits itself to certain analytical paths, thereby eliminating others.

It is true that Justice Rowe’s call for a structured and deliberate methodology has not always been convincing as a descriptive account of Canada’s approach to statutory interpretation. Ruth Sullivan argues that “the judicial task in interpretation is properly characterized not as giving effect to the meaning of the text or the intention of the legislature, but as solving the interpretive problem facing the court in an appropriate and acceptable way.”<sup>135</sup> This form of pragmatism, Sullivan suggests, “acknowledges the limitations of the traditional theories”<sup>136</sup> in statutory interpretation by recognizing the inescapable discretion that judges exercise.<sup>137</sup> Sullivan further argued that “[p]ragmatism explains and justifies the current practice of Canadian courts without resort to linguistic or to legal fictions.”<sup>138</sup>

Recently, the Supreme Court’s comments on statutory interpretation imply a different approach.<sup>139</sup> *CISSS A* refers to statutory text as the interpretive “anchor.” This suggests the text is not merely one variable factor, but rather, as Justice Rowe implies, an interpretive choice that might eliminate modes of reasoning that diminish the text’s distinctive contribution.

This connects to legislative history. If the text of the enactment represents the corporate will of the legislature, then the uses of legislative history in Part II — such as those that confuse the intent of the executive with the intent of the legislature — are suspect.

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<sup>131</sup> Owen Fiss, “Objectivity and Interpretation” (1982) 34:4 *Stan L Rev* 739 at 744.

<sup>132</sup> *Ibid.*

<sup>133</sup> The Honourable Justice Malcolm Rowe & Michael Collins, “Methodology and the Constitution” (2021) 42 *Windsor Rev Legal Soc Issues* 1 at 4.

<sup>134</sup> *Ibid.*

<sup>135</sup> Ruth Sullivan, “Statutory Interpretation in the Supreme Court of Canada” (1999) 30:2 *Ottawa L Rev* 175 at 178.

<sup>136</sup> *Ibid.* at 226.

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.* at 220.

<sup>139</sup> See *CISSS A*, *supra* note 11. See also *Piekut*, *supra* note 12.

## B. SOME METHODOLOGICAL GUIDANCE

This leads us to the final portion of the analysis: how should a structured and deliberate methodology be crafted to use legislative history properly, avoiding the pitfalls in Part II? Below, we offer some tentative thoughts in line with the object of interpretation articulated in *CISSS A* and other recent jurisprudence.

These clarifications to the methodology of statutory interpretation are designed to accomplish several goals. First, they are designed to maintain focus on the text enacted by the legislature. Second, they are designed to ensure that, when relied upon, courts view appropriate materials and consider their provenance. Finally, they serve to ensure that any parliamentary materials that are used in interpretation are credible and carry probative value in relation to the object of interpretation.

### 1. BEGIN — AND OFTEN, END — WITH THE TEXT OF THE ENACTMENT

Judicial decisions themselves sometimes reiterate the exhortation for interpreters to begin with the text of the enactment.<sup>140</sup> Indeed, the Ontario Court of Appeal has declared that “[i]t is trite law that the starting point for modern statutory interpretation is to determine the ordinary meaning of the text.”<sup>141</sup> There are other judicial pronouncements to the effect that “the process of interpreting a statutory provision not only starts with the text of the statute, but also ends there.”<sup>142</sup> In most cases, this makes the resolution of statutory interpretation problems rather uninteresting. By reading the statute, and understanding the text, context, and purpose, courts generally need not resort to extrinsic aids.

That being the case, certain interpretive approaches are ruled out at the beginning of the interpretive exercise if one follows Justice Rowe’s call for a structured and deliberate methodology. For example, starting with the statute first contradicts the Supreme Court’s pronouncement in *Hills* that the legislative history is a good starting point to the interpretation of statutes.<sup>143</sup> The resolution of disputes about the meaning of a statutory term need not always, or even often, be resolved by reference to legislative history. Given the variety and diversity of sources of legislative history, and difficulties distinguishing between these sources, there is wisdom in the exclusionary rule.

Second, legislative history should not be used to contradict the ordinary meaning of the text. This is particularly so when legislative history is called upon to determine the purpose of an enactment writ large. Simply put: the text of the enactment is the representation of the legislature’s intention. A minister’s second reading speech on a government bill represents the executive’s intention, a Library of Parliament summary reflects the Library’s understanding of the bill.

Of course, Canadian law has recognized a narrow place for legislative history. As *MediaQMI* illustrates, legislative history can be useful as an additional justificatory resource

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<sup>140</sup> See Adam M Samaha, “Starting with the Text—On Sequencing Effects in Statutory Interpretation and Beyond” (2016) 8:2 J Leg Analysis 439; *British Columbia Human Rights Tribunal v Schrenk*, 2017 SCC 62 at para 32; *R v Garland*, 2021 ABCA 46 at para 51.

<sup>141</sup> *Stadnyk v Thunder Bay (City)*, 2025 ONCA 137 at para 7.

<sup>142</sup> *Manns v Vancouver Island Health Authority*, 2024 BCCA 110 at para 16.

<sup>143</sup> *Hills*, *supra* note 20 at para 20.

to bolster an interpretive result already obtained by reference to the text, context, and purpose of the legislation.<sup>144</sup> For example, legislative history might explain that the court's interpretation aligns with the intentions expressed by individual parliamentarians or stakeholders who were involved with the development of the law. The probative value of this evidence is weak, but that is why it serves only a weak confirmatory function.

## 2. DISTINGUISH BETWEEN THE DIFFERENT TYPES OF MATERIALS PRESENTED

Where legislative history is advanced to serve this narrow confirmatory function, it must still be relevant. If used as a source of statutory purpose, it should still be relevant to the object of interpretation: the text of the enactment. The key focus of this step is to consider the source of the document. Was it something prepared *for* Parliament, prepared *within* Parliament, or is the connection to Parliament tenuous at best? Care must be taken to notice whether something comes from the executive branch or the legislative branch — and the extent to which parliamentarians considered it or were involved in its preparation.

## 3. PLACE THE MATERIALS IN THEIR PARLIAMENTARY CONTEXT

This analysis involves three main inquiries: *when* was the material prepared and presented? *Was* the material considered by parliamentarians? How does it *fit* within the parliamentary process?

With respect to the first question, consider that materials produced alongside the introduction of legislation will not reflect any amendments made during the legislative process. Further, materials prepared after royal assent could not have been considered by parliamentarians during the enactment process. With respect to the second question, recall that documents tabled in Parliament might not be seen by parliamentarians, let alone agreed to by them.

On the third question, consider where the material falls within Parliament — is it, for example, a speech from one parliamentarian or a report adopted unanimously by one House? Is only House of Commons committee evidence being presented when there may also be relevant Senate committee evidence?

Confusion may understandably arise when a bill is meant to implement some report or commission and whether that report should be considered alongside the bill as evidence of parliamentary intent. While an inquiry as to whether the document was before Parliament may, in some way, illuminate its use by parliamentarians, recall that the recommendations of a report or commission have to be interpreted, and whether or not they are agreed or disagreed with is a policy decision. If the government is responding to a report, it is making policy choices, and those choices will be reflected in the bill it introduces. Judges should perhaps be keenly aware of this reality given differences between what is recommended by the Judicial

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<sup>144</sup> *MediaQMI*, *supra* note 7 at para 38.

Compensation and Benefits Commission and the government's response thereto;<sup>145</sup> it is no different in the legislative context.

Parliament's choices will be reflected in the bill that is enacted (possibly with amendments). To assume a one-to-one correspondence between a report's recommendations and Parliament's resulting legislation may be a bridge too far.

To draw an imperfect analogy, there are instances where Parliament is said to be responding to court decisions. Government (typically) introduces legislation in such cases and may propose a different scheme from that which a court has outlined.<sup>146</sup> Just as a court would be reticent to take its own decision as evidence of parliamentary intent, so must courts tread carefully with other documents that inform the "pre-parliamentary" phase of legislation.

As a final observation, Parliament may not listen to its own recommendations, or perhaps may take considerable time in doing so. Consider that a Senate committee observed in 2008 that "section 159 of the *Criminal Code* should be repealed."<sup>147</sup> Legislation in this regard was enacted 11 years later.<sup>148</sup> Considerable change in the composition of Parliament occurred in the intervening years — along with societal views on the provision at issue related to gay sex — and whether the parliamentarians of 2019 were even aware of the 2008 Senate committee report observation is an open question.

#### 4. CONSIDER THE RELIABILITY OF THE EVIDENCE IN LIGHT OF THE PURPOSE FOR WHICH IT IS BEING OFFERED

The placement of this step may be controversial as it occurs, in this conception, without looking at the content. Yet, this is a principled approach: if one looks to content to weigh credibility, one might be swayed by that which makes the adjudication easy rather than by that which gives heed to the Supreme Court's cautions about the use of some forms of legislative history. The temptation to rely on a "slam dunk" line in a single transcript may be strong, but would the court be prepared, for example, to say "Parliament's intent" is undoubtedly one statement by one parliamentarian in one debate?

Again, there may be particular uses for particular purposes. The first speech on a bill, wherein an individual sponsor might outline *their* intent in proposing a non-government measure, for example, is the prime indicator of the *sponsor's* intent. Conflating this with Parliament's intent in enacting the measure is problematic, but highlighting this particular intention as that of the sponsor in bringing forward the bill (if relevant) is perfectly supportable.

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<sup>145</sup> This is an issue currently being litigated. See Christopher Nardi, "Judges Sue Federal Government over Decision to Refuse \$28,000 Raise", *National Post* (3 December 2025), online: [perma.cc/P2AF-PJ73].

<sup>146</sup> See discussion in *R v Mills*, 1999 CanLII 637 at para 55ff (SCC).

<sup>147</sup> Senate of Canada, Standing Committee on Legal and Constitutional Affairs, *Eighth Report* (27 February 208) (Chair: Joan Fraser) online: [perma.cc/964V-D5B5].

<sup>148</sup> *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make Consequential Amendments to other Acts*, SC 2019, c 25, s 54.

## 5. CONSIDER THE WEIGHT (PROBATIVE VALUE) OF THE EVIDENCE

How does the parliamentary evidence align with the statute's text? How does it square with other pieces of legislative history that might be before the court? This may not be an easy determination to make, but courts grapple with questions of evidence all the time. Fortunately, the court has a clear starting point — the legislative text. If parliamentary evidence assists the court's inquiry in appropriate ways, then it is a valid interpretive tool. If not, courts should not be shy to say so, as some have done:

To a substantial degree, the controversy surrounding the question of whether the amendments are of retrospective or prospective effect is a product of Parliament's conspicuous lack of direction on this issue. The amendments themselves are notoriously silent, and the Parliamentary debate surrounding their introduction is equally unhelpful.<sup>149</sup>

## 6. ONLY USE VALID FORMS OF LEGISLATIVE HISTORY FOR PARTICULAR PURPOSES

As noted throughout, even where it is reliable and probative, legislative history should ultimately only be used for particular reasons. As the Supreme Court has articulated, legislative history — when probative and reliable — can only be used to confirm an interpretation already indicated by the modern approach, or to act as a source of legislative purpose.

## IV. CONCLUSION

This article has argued that the authentic search for legislative intent in enactments requires a cautious approach to legislative history. This approach is in keeping with recent Supreme Court cases sounding caution and offering caveats for the consideration of legislative history. Part I of the article set out the development of the judicial approach to legislative history and its more recent evolution. The traditional exclusionary rule, justified by constitutional and pragmatic concerns, continues to resonate. In Part II, we illustrated where courts may struggle with the probative value of different elements of legislative history, failing to distinguish truly “parliamentary evidence” from all other forms of relevant evidence. In Part III, we advanced several recommendations for how courts should consider these materials in light of the challenges with legislative history.

The Supreme Court's recent attention to interpretive practices under the modern approach is welcome. While interpretive pragmatism is a plausible way to understand the modern approach, the Supreme Court's recent clarifications (the possible confusion of *Wilson's* contribution notwithstanding) arguably suggest a different methodology, one which refocuses attention where it belongs: the text of the enactment. This renewed focus, in turn, suggests that legislative history should be treated in a certain way. As far back as *Rizzo*, the Supreme Court has recognized frailties in the use of legislative history. Today, these frailties are worth further study and thought.

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<sup>149</sup> *R v Pfaller*, 2009 ONCJ 380 at para 24.