

Terms “Agent” and “Representative” in Provincial Offences Act

(simple research on the base of simple and accessible internet sources)

Despite this small research is not deep and fundamental, it could be helpful in developing right approaches to the problem of purposive and contextual analysis of legal terminology and language.

1. Discovering through general meaning of the word

Some words using for legal purpose, we can discover through general vocabulary using general dictionaries and encyclopedias.

As a first step, we chose appropriate to the purpose of the research definitions of the words from any respectable dictionary. It could be, for example, Oxford dictionary.

Agent

Agent - a person who acts on behalf of another, in particular (Oxford dictionary, <http://oxforddictionaries.com/definition/english/agent?q=agent>).

I often use etymology as the useful instrument to research the meaning of the words.

Etymology is the study of the origin of words and the way in which their meanings have changed throughout history (Oxford dictionary, <http://oxforddictionaries.com/definition/english/etymology?q=Etymology>).

So, researching the origin of this term we could observe that “agent” is derived from the Latin word “agens,” meaning to do or to act. (Legal definitions, <http://definitions.uslegal.com/a/agent>).

Representative

Representative - a person chosen or appointed to act or speak for another or others, in particular (Oxford dictionary, <http://oxforddictionaries.com/definition/english/representative>).

I believe that the words have similar meaning, but some following differences exists:

- a) Definition of “agent” puts the stress on a function “a person who acts on behalf of another”. At the same time, definition of “representative” underlines specific relation between representative and his/her assignor: “a person chosen or appointed to act or speak for another or others”. At this aspect I see lesser focus of definition on dependence of agent from assignor and vice-versa regarding dependence of representative.
- b) There are also different points of receiving status of agent and representative in two definitions: agent receives his or her status in direct correlation to the agent’s acts; representative gets his or her status earlier when chosen or appointed to act or speak.
- c) One more reason two underline difference between conceptions - agent acts, but representative could both act or speak.
- d) The last one argument, agent acts on behalf of another person (one), while representative – for another person or others (many).

Analyzing above-mentioned definitions of general vocabulary I could say that “representative” is much more broad conception than “agent”. Probably, it is right to determine that referring to the above-mentioned definitions any agent is representative but not any representative is an agent. Such statement could be confirmed from the position of linguistic transformation words to their paronymous: “representative” – representation; “agent” does not have such paronymous, so there is used representation.

Above-mentioned findings do not permit us to use “agent” and “representative” in the meaning of general vocabulary in any legal statement. We should remember that the purpose of general vocabulary is different than professional one. At the same time, there are no restrictions to use words of general vocabulary for the law purpose. More details about particularities of this idea I would demonstrate further in this text.

2. Discovering through terminology

Terminology is the body of terms used with a particular technical application in a subject of study, theory, profession, etc. (Oxford dictionary, <http://oxforddictionaries.com/definition/english/terminology?q=Terminology>).

Terminology looks at the word deeply regarding functionality of its meaning. The meaning of term is determined and could be corrected depending on the term’s functionality (Provincial Offences Act is a colourful example of that). Legal terminology may have general legal meaning (general legal definition of term fits any specific branch of law) or require reference to the specific legal sphere only.

It should be mentioned that some words were born by terminology and came in the general vocabulary. Some words of general vocabulary came in terminology and got new significance. We also still use words of general vocabulary for the professional purpose.

As a source of professional terminology we often use legal dictionaries and collections of legal definitions.

Following the idea of this research we can observe how the meaning of “agent” and “representative” would change if they are used for the purpose of law specifically.

Agent - a person who has received the power to act on behalf of another, binding that other person as if he or she were themselves making the decisions (legal dictionary, <http://www.duhaime.org/LegalDictionary/A-Page2.aspx>)

Analyzing such definition we could identify the following:

- Agent receives power from the principal;
- Agent status is related to his or her act on behalf of principal;
- Agent’s acts are binding for the principal.

Comparing “agent” definitions of general vocabulary and legal dictionary, we have possibility to notice how it is important to underline for the purpose of law that an agent gets power from a principal and that agent’s acts are binding for a principal. This idea refers to delegation and responsibility which are very important doctrines of law.

I didn't find term "representative" in general legal meaning. I believe that representative for the purpose of law is used in the meaning of general vocabulary or special legal meaning depending on the branch of law, statute and so on.

Next step, we could observe definitions of terms which are connected to different branches of law.

Representative

"Representative is a term subject to different meanings. In agency law, it refers to an agent who is authorized to act on behalf of another. In the context of probate law, it is a generic term for an executor or administrator of the estate of a person who has died, generally referred to as the "personal representative."

A legal representative is defined according to the laws governing the subject matter of the context in which it is used. It may be, among others, an individual's personal representative or guardian. A legal representative could include any natural or legal person with the legal capacity to represent the other party, including individuals, companies, other entities, lawyers etc., but not incapacitated adults, minors and the like.

In evidence law, it refers to an accurate depiction of the condition of something, such as "these pictures are representative of the conditions at the rental premises." In government, a representative is one that represents a constituency as a member of a legislative or other governing body; ..." (legal definitions, <http://definitions.uslegal.com/r/representative/>) (underlined by us).

I used as the source American Internet site, but on my opinion, it does not make any significant differences for the purpose of our research.

Agent

"In the legal context, an agent is someone who is authorized to act on behalf of another (usually the principal). Any individual capable of performing the specific functions and creating legal relations between a person (principal) and third parties can become an agent. It is not essentially required that an agent be legally capable of entering into a contract. Therefore, any individual can be an agent, i.e. a minor or a lunatic can be an agent. However, the court would ignore either's attempt to act as s/he was so young or completely incapable of understanding the function they were attempting to perform.

There are different kinds of agent such as corporate agent, dual agent, foreign agent and independent agent. For example, an independent agent is one who makes a personal judgment and is accountable to the principal only for work performed by him..." (legal definitions, <http://definitions.uslegal.com/a/agent>).

Looking at the above-mentioned definitions it is important to underline the following:

- The meaning of "representative" is varied depending on branch of law;
- "Legal representative" and " representative" are not the same (e.g., every legal representative is a representative but not every representative is a legal representative);

- “Personal representative” and “representative” are not the same (e.g., every personal representative is a representative but not every representative is a personal representative);
- There is a difference between “representative” and “agent” as per general perception and perception of them from the position of court (statute, law by itself).

3. Discovery through the wording and spirit of Statute law

Legislator uses words of general vocabulary and professional terminology to determine the content of the law.

Some terminology which has special meaning for the purpose of the Statute is determined in this Statute (for example, in general provisions, in subsection of Statute section). Sometimes, concept (term) may have different meaning for different sections or parts of Statute. To find some examples of such approach we, for example, can use HTA (for example, definition of “motor vehicle” varies in the Act). However, there is also possibility that the meaning of term won’t be determined in wording of statute, but would be understandable due spirit (purpose) of Statute or its provision. Such approach could be named as using of implied meaning of term. The term “intoxication” which is used in Liquor Licence Act serves as an example of this case. I believe that in some situations, we also can find definition of terms for the purpose of statute in regulation or by-law which made under such statute. It is also typical situation when the statute contains reference to the other statute in respect of term definition.

It is right to mention that statute terminology is used as legal general terminology or specific legal terminology which is related to the specific branch of law and vice-versa, legislator uses legal general terminology and specific legal terminology to create body of statute.

Regulations and by-laws also often use their own terminology. I mean terminology which is not determined by their statute(s).

For the purpose of our research it is interesting to consider meaning of “agent” and “representative” referring to the provincial offences procedural legislation, particularly to Provincial Offences Act (further, POA).

POA

“Representative” and “representative of the defendant” (not at trial)

Section 1 of POA states that “representative” means, in respect of a proceeding to which this Act applies, a person authorized under the Law Society Act to represent a person in that proceeding. This definition is used by the legislator to determine “representative of the defendant”. This research would demonstrate below that the meaning of “defendant’s representative” varies depending on stage of proceedings and despite of definition of “representative” in s.1 of POA. On my opinion, the definition of s.1 of POA formally includes “representative of the prosecutor”, but as per our understanding we exclude this term from the meaning of the representative according to s.1 of POA.

Ss. 5 (3) (a), 17.1 (3), 18.1.1 (3) of POA use “representative” in the meaning underlined by s.1 of POA.

S. 26 (4) (c) (ii) of POA recognizes that agent is representative for the purpose of servicing documents. In this section “representative” has a general meaning and not a meaning determined by s.1 of POA. There is no specific definition of “representative”. So, we have an example of implied meaning of “term”.

S. 43 (3) of POA uses “representative” for the purpose of representation of defendant in the pre-trial procedure. S.45.1 (1) states that representative could represent defendant in the judicial pre-trial conference.

“Representative of the defendant at trial”

S. 50. (1) of POA states that in court a defendant may appear and act personally or by representative. In this section, on my opinion, the legislator gives the defendant an option to have representative for the trial purpose. The legislator also determines a general rule that during the trial, procedural rights of defendant and his/her representative are equal (in perception of the court).

S. 50 (2) of POA states that a defendant that is a corporation shall appear and act by representative. In this section exclusion from general provision of s.50 (1) of POA is determined. To have a representative is not an option for a corporation but procedural requirement (nature of corporation is the issue). This is definitely new aspect for the term “representative” as per s.1 of POA.

Finally, in s. 50 (3) of POA the legislator determines that the court may bar any person, other than a person who is licensed under the Law Society Act, from appearing as a representative if the court finds that the person is not competent properly to represent or advise the person for whom he or she appears, or does not understand and comply with the duties and responsibilities of a representative. On my opinion, by above-mentioned provision the legislator made the following statements:

- Court has discretion and makes findings to determine if person meets requirements of “representative of defendant” status in terms of competence to represent or advise person;
- There is a difference in the meaning of “representative” and “representative who is licensed under the Law Society Act” for the purpose of this section of POA;
- Court discretion is restricted in relation to “representative who is licensed under the Law Society Act” (in this case, court could not override LSUC competence to regulate profession);
- General important conclusion: both “representative” and “representative who is licensed under the Law Society Act” should be competent for the purpose of representing at trial (despite barred from representation by court could be just “representative” other than “representative who is licensed under the Law Society Act”).

The similar competence of court is determined in s.91 (7) regarding barring representative in contempt (logic the same).

S. 51 of POA continues to make exclusions from s.50 (1) of POA stating that although a defendant appears by representative, the court may order the defendant to attend personally, and, where it appears to be necessary to do so, may issue a summons in the prescribed form.

It means the court has discretion to require presence of the defendant despite the last one chose the option to have representative at trial. However, compelling attendance of defendant does not mean that defendant is compelled witness (s.11 (c) of the Charter).

S. 56(2) of POA states that pre-sentence report could be served on the defendant's representative. The term is used in the meaning of s.1 of POA.

S. 57(1) of POA makes a difference between representative and the defendant regarding submissions as to the sentence. This section states that the court shall give the prosecutor and the defendant's representative an opportunity to make submissions as to sentence and, where the defendant has no representative, the court shall ask the defendant if he or she has anything to say before sentence is passed. This provision is interesting by confirming the following idea. The competence of defendant's representative at trial (even who is not licensed under Law Society Act) is presumably higher than the competence of the defendant. This is why legislator gives defendant's representative possibility to make submissions as to sentence (the self represented defendant has the option to say "something"), and discretion to court under provision of s.50 (3) of POA.

In s.165.1 (3) para 3 "representative" is used in the general meaning and not in the meaning of this term under s.1 of POA.

In short, due to this analysis of POA provisions we can see the different meaning of "representative" in the body of the statute. We found at least three different meaning of term "representative" in POA: general meaning, meaning of representative determined in s.1 of POA and meaning of representative for the trial purpose. We should underline that legislator recognizes different functions of representative of the defendant at pre-trial and trial stages of the proceedings. Therefore, despite definition of "representative" in s.1 of POA, the meaning of this term regarding named stages of the proceedings is different. Our perception of "representative" was changed as soon as legislator added additional capacity to this term for the purpose of the statute.

Such findings just support our idea that legal terminology is looking at functionality of terms and varies if there is necessity. It could vary even if there is definition of the term in the general provision of statute, because legislator may use implied different meaning to the same term, gave new definition to this term in section of statute or add new capacity to the term which is determined in initial definition.

Agent

Section 1 of POA does not provide us with definition of "agent". Such approach just supports our previous findings regarding the term "agent".

S. 3 (8) of POA which has a title "Officer not to act as agent" states that the provincial offences officer who serves an offence notice or summons under this section shall not receive payment of any money in respect of a fine, or receive the offence notice for delivery to the court. In this section, "agent" has special legal implied sense: person who earns remuneration for service of documents.

In s. 1, 21 (2), s. 26 (4) (c) (ii), 32 (1), 54(2), 62 of POA "agent" is used in general legal meaning of this word.

S. 153 (1) of POA specifies special capacity of agent for the purpose of trial. This section determines that a person who is released upon deposit under subsection 149 (3) of POA (cash bail by non-resident) or clause 150 (2) (c) of POA (non-resident entering in recognizance) may appoint the clerk of the court to act as the person's agent, in the event that he or she does not appear to answer to the charge, for the purpose of entering a plea of guilty on the person's behalf and authorizing the clerk to apply the amount so deposited toward payment of the fine and costs imposed by the court upon the conviction, and the clerk shall act as agent under this subsection without fee.

This provision is very interesting by the unique situation when court agent (neutral person for the trial purpose could act as an agent of the defendant. "Agent" in this provision has special capacity because he or she could only enter a plea of guilty on the person's behalf and apply the amount deposited by the defendant toward payment of the fine and costs imposed by the court upon the conviction. The last important detail is that the clerk shall act as agent under this subsection without fee (above we analysed situation when "agent" was used in the meaning of person who earns remuneration for service of documents).

In section 167 (2) of POA the term "prosecutor" for the purpose of Part X of POA includes their agent(s). So, for the purpose of the Part X of POA there is no difference between "prosecutor" (formally "principal") and their agent. Again, our perception about "agent" was changed for the purpose of the law.

S. 169 of POA states the following: municipality that acts under a transfer agreement does not do so as an agent of the Crown in right of Ontario or of the Attorney General. As could be observed in this section, sometimes it is important to underline that person is not an agent.

In conclusion, analysing the use of "agent" we could notice the same trend: its meaning varies depending on the purpose of section's provision or Part of POA.

4. Discovery through the case law

It is true that the court uses all abovementioned sources to determine right terminology for its own decisions.

The other idea is the following. When the judge sees necessity to clear implied meaning of term using in statute provision or liquidate conflict between conceptions, change the meaning of term or proceed with further clarification of term function, he or she may do such thing in the court decision. In such way case law provides us with authorities to follow regarding terminology.

Conclusion

So, using term we should remember that every term is still a "word" - piece of information. Therefore, using terminology important to know which information we want to communicate others. We also should be sure that "others" has presumable ability to perceive this information without change of its author's meaning.

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