SUPREME COURT OF YUKON

Citation: *Hill v Tomandl*, 2015 YKSC 34

Date: 20150723
S.C. No. 13-A0166
Registry: Whitehorse

Between:

LINDA HILL

PLAINTIFF

And

JASON TOMANDL, KETZA CONSTRUCTION CORP., SNC-LAVALIN GROUP INC., SNC-LAVALIN OPERATIONS & MAINTENANCE INC., operating as SNC-LAVALIN O & M

DEFENDANTS

Before: Mr. Justice J.Z. Vertes

Appearances:
Debra L. Fendrick — Counsel for the Plaintiff
A.D. Schmit — Counsel for Tomandl & Ketza
Kurtis Kruse — Counsel for Lavalin et al

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application by the defendants for a declaration that the plaintiff's claim is statute-barred. It raises an issue regarding the interplay of the federal *Government Employees Compensation Act*, R.S.C. 1985, c. G-5, and provincial/territorial workers' compensation statutes. For the reasons that follow, the application is dismissed.

FACTS

[2] The underlying facts are not in dispute.

[3] The plaintiff is an employee of the Government of Canada in Whitehorse, Yukon. On April 10, 2012, she was injured when a piece of wood fell from a construction project on the roof of the building where she worked. The project was contracted to the defendant Ketza Construction Ltd. ("Ketza") by the Government of Canada. The defendant Tomandl was an employee of Ketza. The defendant SNC Lavalin was contracted by the Government of Canada to carry out property management and maintenance services at the building.

[4] At the time of the accident the defendants Ketza and SNC Lavalin were registered with the Yukon Workers' Compensation Health and Safety Board. For the purpose of this application I find that Ketza and SNC Lavalin were "employers" as defined in the *Workers Compensation Act*, S.Y. 2008, c. 12, and that the defendant Tomandl is a "worker" under that statute. Whether the plaintiff is a "worker" under that legislation is more problematic.

[5] Because the plaintiff is a federal employee, it is necessary to consider the basic statutory framework that applies in her situation.

[6] The *Government Employees Compensation Act* (hereinafter referred to as "*GECA*") was enacted in 1918 by the Parliament of Canada for the purpose of providing a compensation scheme for federal government employees who were injured on the job. It did not, however, create a separate compensation regime but instead brought federal employees within the compensation scheme of the province in which they work. Administration of an injured employee's claims was placed in the control of the provincial workers' compensation authority.

[7] Subsection 4(1) of *GECA* provides for the entitlement to compensation of a federal employee who is caused personal injury by an accident arising out of and in the

course of her or his employment. Subsection 4(2) provides for compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed. Subsection 4(3) provides that such compensation shall be determined by the same board, officers or authority as that established by the law of the province.

[8] With particular reference to the present case, s. 5 of *GECA* states that where an employee is usually employed in the Yukon or the Northwest Territories, the employee shall for purposes of the statute be deemed to be usually employed in the Province of Alberta. By an agreement made in 1995 between the federal government and the Workers' Compensation Board of Alberta, the Board agreed to adjudicate and administer all claims from federal employees and to pay compensation. In return, the federal government agreed to pay to the Board the costs of the claims as well as the costs of basic health services and administration.

[9] In this case, the plaintiff's employer filled a report of the accident with the Alberta Workers' Compensation Board. On April 23, 2012, the Board wrote to the plaintiff notifying her that they received the documentation relating to a potential claim and advising her that, in order to adjudicate her claim, they would require further documents including an "Election to Claim under the Act form". On June 19, 2012, the plaintiff received a letter from her employer enclosing a form entitled "Election to Claim under the Act". The letter went on to explain that, since her injury was caused by a third party, that meaning (according to the letter) not her employer or the employer's agent acting in the course of employment, she had the right to elect (a) to claim compensation pursuant to *GECA*; or, (b) to sue the responsible third party.

[10] This reference to an election emanates from s. 9 of *GECA*:

> 9(1) If an accident happens to an employee in the course of their employment under any circumstances that entitle the employee or their dependents to an action against a third party, the employee or their dependents, if they are entitled to compensation under this Act, may claim compensation under it or make a claim against the third party.
>
> (2) The election made by the employee or their dependents is final.

[11] The plaintiff elected to take action and so advised her employer. On July 18, 2012, her employer informed the Alberta Workers' Compensation Board that the plaintiff had elected to sue and that the employer's file was closed. In doing so, it asked the Board: "Please do not make any debits against our account." The plaintiff then commenced this action seeking damages as a result of her injury.

ISSUE

[12] The issue, simply put, is whether this action is subject to the statutory bar found in s. 23(1) of the Alberta *Workers' Compensation Act*, R.S.A. 2000, c. W-15:

> 23(1) If an accident happens to a worker entitling the worker or the worker's dependents to compensation under this Act, neither the worker, the worker's legal personal representatives, the worker's dependants nor the worker's employer has any cause of action in respect of or arising out of the personal injury suffered by or the death of the worker as a result of the accident.
>
> (a) against any employer, or
>
> (b) against any worker of an employer,
>
> in an industry to which this Act applies when the conduct of that employer or worker caused or contributed to the injury arose out of and in the course of employment in an industry to which this Act applies.

[13] A similar statutory bar can be found in s. 50 of the Yukon *Workers' Compensation Act* as well as in many other provincial and territorial compensation statutes.

[14] The fact that the defendants are registered under the Yukon statute makes no difference to the issue in this case. The only reason that the Alberta legislation is in question is because of the deeming provision in s.5 of *GECA*. As defendants' counsel put it, the basic form of the statutory bar is consistent as between Alberta and Yukon and considerations of provincial comity support the substantive application of the benefits of the statutory bar to the defendants notwithstanding the deeming provision: see *Spencer v Mansour's Limited et al*, 2000 NSCA 59.

[15] The more significant point, however, is that there is no similarly broad statutory bar in *GECA*. The only prohibition is against suits directed to the federal Crown, its agents and employees, found in s. 12 of *GECA*:

> 12. Where an accident happens to an employee in the course of his employment under such circumstances as entitle him or his dependents to compensation under this Act, neither the employee nor any dependent of the employee has any claim against Her Majesty, or any officer, servant or agent of Her Majesty, other than for compensation under this Act.

[16] A more fundamental question underlying this issue is whether the right of election in s. 9 of *GECA* is at all meaningful considering the nature of workers' compensation legislation generally. That is because the primary argument of the defendants is that *GECA* intends to subject all injured federal employees to provincial workers' compensation legislation irrespective of what election is made by the employee under s. 9 of *GECA.*

ARGUMENTS

[17] The defendant's arguments are based on two broad-based principles: (1) the so-called "historic trade-off" whereby decisions about compensation for work-place injuries are taken out of the courts; and, (2) what the defendants call the clear intention of Parliament to have a consistent application of workers' compensation schemes at the provincial and federal levels.

[18] The defendants submit that it would be inconsistent with the "historic trade-off" and Parliament's intention to subject federal employees to provincial compensation systems if lawsuits were permitted to proceed against employers and other employees covered by the provincial scheme. The whole point of a universal scheme of compensation is to avoid lawsuits where employers and employees are involved. The defendants argue that a consistent interpretation of the interplay between *GECA* and the Alberta legislation is only achieved by a finding that the applicable statutory bar operates in tandem with *GECA.*

[19] The defendants also submit that the proper interpretation of s. 9 of *GECA* is to be found in what is meant by "third party". They say that by necessity the term third party must be read as referring to a "proper" third party, i.e. one not protected by the provincial legislation. In their view, the term third party has to be read this way so as to avoid inconsistency with the provincial legislation.

[20] The defendants also base their arguments on the issue of status. They submit that once status is established as a "worker" or "employer" under the provincial legislation, then the election is no longer relevant and all provisions of the provincial legislation apply.

[21] The plaintiff submits, in response, that *GECA* is the primary legislation and that the provincial legislation comes into play only when a claim for compensation is made. The filing of the claim engages the provincial authority and where, as here, an election is made to sue a third party then the provincial board and legislation have no role to play. The plaintiff argues that *GECA* determines the primary rights of an injured federal employee. It is only when a claim for compensation is made that *GECA* transfers the authority to the provincial board.

[22] Further, the plaintiff argues that she cannot be considered a “worker” under the provincial legislation generally since *GECA* states in s. 5, that, as an employee working in Yukon, she is merely “deemed to be usually employed in the Province of Alberta”. She may be subject to the terms and conditions of the Alberta legislation should a claim for compensation be made but the trigger must be the claim, or in this case, the election. Here the plaintiff says she has not attorned to the jurisdiction of the Alberta board so her rights, under *GECA*, are not limited by the Alberta legislation.

ANALYSIS

[23] Defendant’s counsel informed me that they were unable to find any case directly on point. They also acknowledged that all cases that have dealt with the interplay between *GECA* and provincial workers’ compensation statutes were cases where a claim for compensation had been made and, in most cases, compensation was paid. No case dealt directly with the impact of provincial legislation where, as here, an election to take action against a third party was made by the injured employee.

[24] Counsel relied on two decisions from the Supreme Court of Canada in support of the defendants’ basic argument that applying the statutory bar would be consistent with

the principles of the “historic trade-off” and the intention of Parliament to have federal employees governed by provincial compensation schemes.

[25] The first is *Marine Services International v Ryan Estate*, [2013] 3 S.C.R. 53. In that case, the dependents of two seamen, who died when their ship capsized, sued the ship designer and builder for damages in negligence under the federal *Marine Liability Act*, S.C. 2001, c. 6. However, they had applied for and received compensation under the workers’ compensation legislation of Newfoundland and Labrador. That legislation contained a statutory bar of action. The defendants moved for a determination that the action was statute barred. Ultimately, the Supreme Court agreed that it was and dismissed the action.

[26] The judgment in *Marine Services* discusses the doctrine of federal paramountcy in a situation of possible conflict as between federal and provincial legislation. The *Maritime Liability Act*, provides, in its s. 6(2), that a dependent may bring an action “under circumstances that would have entitled the person, if not deceased, to recover damages”. The Court found that this language recognizes that there may be situations where the circumstances do not entitle a dependent to bring an action. It held (at para. 76) that such a situation occurs where a statutory provision (such as the statutory bar in the provincial workers’ compensation legislation) prohibits litigation because compensation has already been paid. Thus, there is no inconsistency or conflict as between the federal and provincial legislation. But, and this needs to be emphasized, the ruling is predicated on the fact that workers’ compensation had been claimed and paid to the dependants.

[27] The second Supreme Court judgment relied on by the defendants is *Martin v Workers’ Compensation Board of Alberta*, [2014] 1 S.C.R. 546. The issue in that case

was whether a policy of the provincial Workers' Compensation Board could be applied, to deny a federal employee's claim for compensation. The Court of Appeal held that the provincial policy did apply and this conclusion was upheld on appeal by the Supreme Court of Canada. In doing so, the Supreme Court held that, in enacting *GECA*, Parliament intended that provincial boards and authorities would adjudicate the compensation claims of federal employees, including both as to entitlement to and rates of compensation, according to provincial law, except where *GECA* clearly conflicts with the provincial legislation. Where a direct conflict with the provincial law exists, *GECA* will prevail rendering that aspect of the provincial law or policy inapplicable to federal employees.

[28] The *Martin* case also referred to the "historic trade-off" under which workers lose their cause of action against their employers for workplace injuries but gain coverage under a no-fault insurance scheme paid for collectively by employers. But, again it must be emphasized, the *Martin* decision was in the context of a claim for compensation.

[29] It would be helpful if, at this point, I set out my interpretation of how the scheme put in place by *GECA* operates.

[30] The federal statute defines, in s. 2, who is an "employee" and thus eligible to the benefits of the *Act*. Section 3(1) of *GECA* identifies certain persons who are not eligible (members of the Canadian forces and RCMP). Section 4(1) is a general provision that compensation is to be paid to employees who are injured by an accident arising out of and in the course of employment or disabled by reason of an industrial disease, and also to dependents of an employee whose death results from such an accident or industrial disease. Thus, all employees who are injured on the job shall be paid compensation but, as s. 4(1) states, "Subject to this Act". But, generally, all injured

employees may claim compensation. Then the provincial board becomes involved in the claim. This is the general scheme as outlined as well in *Cape Breton Development Corporation v. Morrison Estate*, 2003 NSCA 103, leave to appeal refused, [2004] 1 S.C.R. vii, at para. 54:

> While the point of entry in the statute might be between s. 3 and s. 4, after GECA has defined the federal employees to which it applies, the process really begins when the claim is filed. Workers made eligible by the GECA definitions in s. 2, and not excluded by s. 3, who have, or consider that they have, suffered accidents or illness, or the dependents of such workers, are entitled to file claims for compensation. *The filing of the claim engages the provincial legislation.* The administrative agreement makes it clear that all claims are to be investigated and reviewed for eligibility by the Workers' Compensation Board. That is, the Workers' Compensation Board is clothed with jurisdiction over the federal worker from the moment the claim is filed. The Board of course is a creature of provincial statute. Its powers of investigation and review, like all the other powers it exercises, must be found within, and only within, the provisions of the provincial enactment. Once the provincial legislation is engaged, in my view it is engaged for all purposes of GECA and the Workers' Compensation Acts. It applies to the federal worker who has made the claim. In order to investigate the claim, as it is required to do, the Board must apply its own statute.
>
> (Emphasis added)

[31] *GECA*, however, goes on to differentiate between cases where an employee is simply injured on the job and cases where the injury is due to the fault of a third party. Section 9(1) specifically refers to an accident that happens “under any circumstances that entitle the employee or their dependents to an action against a third party”. This section is preceded by the title “Claims Against Third Parties and Compensation”. So, *GECA* clearly intends to distinguish these types of injured employees from other employees who are injured without fault on the part of a third party. And the term “third

party" can only be someone other than the employer or a fellow employee since those entities are protected by the statutory bar in s.12 of *GECA*.

[32] How are these employees (such as the plaintiff in this case) treated differently? They are given an option. They may claim compensation under *GECA* (and engage the involvement of the provincial workers' compensation authority and the application of the provincial legislation) or they may elect to bring action against the third party. And, by virtue of s. 9(2), whatever choice the injured employee makes is final.

[33] During argument on this application, the s. 9 election was sometimes referred to as a "gateway". Defendants' counsel objected to this characterization because, in their submission, this would be inconsistent with Parliament's intention to have federal employees governed by provincial compensation legislation. In my opinion, however, there is nothing inconsistent with the intention to have provincial legislation apply to claims for compensation by creating a separate class of injured employees who, under certain circumstances, may elect to sue a third party. All claims for compensation are handled consistently under *GECA* in conformity with that intention. It is only where there is potential fault on the part of a third party that the injured employee may choose to bring an action rather than claim compensation.

[34] To say that the provincial legislation applies even when an injured employee elects not to claim compensation is to strip s. 9 of *GECA* of all meaning and effect. It is tantamount to saying that *GECA* has the effect of adopting the provincial legislation. The result would be to say that Parliament agreed to be bound by the Alberta statute, including the statutory bar, under all circumstances.

[35] I do not accept, however, that this is the case. A similar argument was made to the trial judge in *Canada (Attorney General) v. Ahenakew (c.o.b. Ahenakew Trenching)*,

[1984] S.J. No. 293 (Q.B.), appeal dismissed, [1984] 4 W.W.R. 230 (C.A.). In that case, the federal government brought a subrogated action on behalf of the dependants of a deceased employee against the defendant who was found liable for causing the death. Subrogated actions are provided for in s. 9.1(3) of *GECA* which states that the employer is subrogated to the rights of the employee or their dependants and may maintain an action against the third party where an election has been made to claim compensation. The defendant Ahenakew argued that the action was statute-barred by virtue of the Saskatchewan compensation legislation. In dismissing this argument, the trial judge said as follows regarding the contention that the federal government adopted the provincial legislation (at para. 33):

> I agree that one legislative body may adopt the legislation of another such body. See Attorney-General for Ontario v. Scott (1956) 1 D.L.R. (2d) 433 and Coughlin v. The Ontario Highway Transport Board (1968) S.C.R. 569. However, I do not agree that Parliament has adopted the legislation contained in The Workers' Compensation Act, 1979. Rather, the provisions contained in The Government Employees Compensation Act and the terms contained in the written agreement relate to and are solely for the purpose of administering the federal plan which is separate and distinct from the provincial plan. Parliament has merely chosen to base the amount of the compensation awards upon those paid in the respective provinces, undoubtedly in an attempt to achieve uniformity within each province. Secondly, Parliament has merely hired the provincial board to administer the federal plan. This conduct by Parliament cannot be construed as adopting the provincial legislation in total. As well, this conduct by Parliament cannot be construed as the Crown "submitting to the operation of the Act", i.e. the provincial Act.

[36] I agree with this conclusion. It is supported by the Supreme Court’s references in *Martin* to the effect that *GECA*, even though it has as its objective the adjudication and administration of federal employees’ claims for compensation by provincial authorities,

does not result in Parliament binding itself to provincial legislation since, as the Court put it in *Martin*, where a conflict exists then *GECA* applies. And, as also noted in *Martin*, where Parliament intended to impose conditions different from what may be contained in provincial legislation, it has done so.

[37] This last point was highlighted in the *Martin* case when the judgment spoke of Parliament's intention to enact specific exceptions to its reliance on provincial law (at para. 37):

> For example, in 1947, Parliament amended the GECA to provide coverage for pulmonary tuberculosis contracted in a government hospital or sanatorium, which was not covered at the time under provincial legislation. During a debate in the House of Commons, the Minister responsible for the amendments referred several times to Parliament's general intention "to accept the decisions of the provincial boards of what is an accident and what is an industrial disease" in order to avoid setting up a separate federal authority to adjudicate claims (Hon. Lionel Chevrier, House of Commons Debates, vol. II, 3rd Sess., 20th Parl., March 31, 1947, at p. 1892). However he affirmed that the amendment "introduces a new principle" and that the new section "provides something which no other provincial act, save for perhaps one, does" (pp. 1894 and 1896).

[38] In a similar fashion, Parliament chose, by enacting s. 9 of *GECA*, to provide an exception to the usual statutory bar found in most provincial compensation statutes.

[39] In any event, it cannot be said that a statutory bar as broad as that found in the Alberta statute, one protecting third party employers and workers, is fundamental to compensation schemes. Not all jurisdictions have the same broad statutory bar. The Yukon *Workers' Compensation Act*, for example, bars actions by the injured worker or their dependants against the employer, another worker of the same employer and any other worker or employer under the *Act*. But, the prohibition against action against another employer or such an employer's worker does not apply if the injury arose from

the use or operation of a vehicle: see ss. 50(4) of the Yukon statute. As another example, under the Northwest Territories' legislation as it existed prior to its amendment in 2007, the statutory bar was limited to protecting the employer and co-workers of the injured worker: *Workers' Compensation Act*, S.N.W.T. 1977 (1st), c. 7, s. 12(2). This is still the case in Prince Edward Island where the legislation provides that, where an accident happens to a worker in the course of employment in such circumstances as entitle the worker to an action against some person other than the employer or another worker of the same employer, the worker may elect to claim compensation or to bring the action: *Workers Compensation Act*, R.S.P.E.I. 1988, c.W-7.1, s. 11(1). The statutory bar in that legislation applies only to bar action against the injured worker's employer or another worker of the same employer: s. 13(1).

[40] Further, it cannot be argued that the federal Crown is an "employer" subject to the Alberta statute. The Alberta *Workers' Compensation Act* defines "employer" in s. 1(j). That definition includes the Crown in right of Canada but only insofar as it "submits to the operation of this Act". There is nothing in *GECA* to indicate an intention by Parliament to submit the Crown to the operation of the Alberta statute. It merely transfers the authority to administer and adjudicate a claim for compensation made by an injured employee. In exchange, the federal government agrees to reimburse the provincial authority for all costs out of the consolidated revenue fund (see s. 4(6) of *GECA*). The conclusion as to the federal Crown not being an "employer" under provincial legislation can be supported by reference to the *Ahenakew* case, *supra,* at paras. 34-38 (Q.B.) and para. 3 (C.A.).

[41] It also cannot be said that the plaintiff is a "worker" within the meaning of the Alberta statute. She does not reside in Alberta (she is merely deemed to be usually

employed there by s. 5(1) of *GECA*); she is not employed by an "employer" under that *Act*; and, she has not filed a claim for compensation under the provincial Act. And, as noted by plaintiff's counsel, a province cannot legislate as to federal employees. The only authority over a federal employee enjoyed by the Alberta board is that given by *GECA* and that is premised on a claim for compensation being made.

[42] These arguments about status are very much secondary, however, to the primary point, that being that by *GECA* Parliament decided to give injured employees, in circumstances where the injury was caused by a third party, the right to elect whether to claim compensation or to maintain an action against the third party. It is only where a claim for compensation is made that the Alberta legislation comes into play.

[43] I do not think I need to enter into an extensive discussion of the "historic trade-off" emphasized by defendants' counsel. That trade-off, whereby workers lost their cause of action against their employers but gained compensation that depends neither on the fault of the employer nor its ability to pay, was extensively reviewed in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890. Nothing I would say on the topic would add to the review conducted in that case.

[44] I will say, however, that I do not think that the right of election found in s. 9 of *GECA* undermines the principles behind the historic trade-off. The whole purpose of *GECA* respects that trade-off as it was originally conceived. When Ontario first adopted the trade-off in 1914 only the employer of the injured worker was granted immunity from suit. It was only later that Ontario amended its legislation to protect other employers covered by the statute: see *Pasiechnyk* at para.25. Similarly, an injured federal employee cannot sue her or his employer or a fellow employee but instead is guaranteed compensation (albeit compensation determined by a provincial authority).

Only if a third party is involved does the injured employee have the right to elect to sue that third party. And, even if the employee elects to claim and receive compensation, the third party may still be liable to an action because of the subrogation rights provided by s. 9.1(3) of *GECA*.

[45] I also do not think it necessary to enter into an extended discussion of the doctrine of paramountcy or how to treat conflicts between federal and provincial legislation. In my view, there is no conflict here because the Alberta *Workers' Compensation Act* does not apply in a case where an election has been made to sue the third party.

[46] Defendants' counsel, however, argued that *GECA* must be interpreted in a harmonious and consistent fashion with the provincial legislation having regard to Parliament's intention that provincial boards and authorities would adjudicate the workers' compensation claims of federal employees. Thus, they submitted that the proper application of s. 9 of *GECA* is in the definition of "third party". The third party must be, in their view, a "proper" third party, one not protected by legislation such as the statutory bar found in the Alberta *Act*.

[47] This argument bears a superficial similarity to the point in the *Marine Services* case where the decision turned on the application of the word "entitled". As previously noted, in that case the dependents of the deceased seamen brought an action under s. 6(2) of the *Marine Liability Act* which held that a dependant may bring a claim under circumstances that would have entitled the deceased, if alive, to recover damages. The Supreme Court held that this necessarily meant that there may be circumstances where a deceased, if still alive, would not be entitled to recover damages. Such a circumstance was where, as in that case, compensation was received pursuant to the provincial

workers' compensation legislation. Thus, the statutory bar in that legislation disentitled the dependants from bringing an action (see *Marine Services, supra*, at paras. 76-77).

[48] At the risk of repetition, I point out the obvious. In *Marine Services* the dependants applied for and received compensation under the provincial legislation. So it makes sense that they were bound by that legislation. In the present case, the plaintiff was given a choice, a choice provided by *GECA*, and she chose to forego compensation and instead bring an action against the third party defendants.

[49] To interpret the term "third party" in s. 9 of *GECA* in the way advocated on behalf of the defendants, would, in my opinion, defeat the clear intention of Parliament as expressed in s. 9. That intention is, in cases where a third party may be liable for the employee's injury, to permit the employee to choose to bring an action. This specific intention, in the case of third party involvement, does not diminish the general objective of *GECA* to delegate the adjudication and administration of federal employees' compensation claims to provincial authorities.

[50] Also, to interpret "third party" as proposed by the defendants would render the right of election meaningless. Parliament cannot be thought to pass meaningless legislation. What the defendants' interpretation would do is frustrate the purpose of s. 9 of *GECA*. The statutory bar in s. 23(1) of the Alberta statute is inconsistent with the right to elect to sue in s. 9 of *GECA*.

[51] The defendants, however, also pointed to the fact that the wording in s. 9 of *GECA* is permissive. The employee "may" claim compensation or "may" make a claim against the third party. They argued that permissive federal legislation does not frustrate valid provincial legislation and referred to the following extract from *Marine Services* (at para. 69):

> The "standard for invalidating provincial legislation on the basis of frustration of federal purpose is high; permissive federal legislation, without more, will not establish that a federal purpose is frustrated when provincial legislation restricts the scope of the federal permission": *COPA*, at para. 66.

The reference in this extract to "*COPA*" is to *Quebec v. Canadian Owners & Pilots Association*, [2010] 2 S.C.R. 536.

[52] There is a vast body of commentary on the use of the word "may" in legislation. Generally speaking, the word "may" must be read in context to determine if it means an act is optional (or discretionary) or if it is mandatory. In some contexts it may be empowering, as in "authorized to do" something. In my opinion, that is what s. 9 of *GECA* does. It empowers the injured employee to elect one or the other of two courses of action. So it is not merely permissive. It also has a mandatory quality since s. 11 of *GECA* requires that notice of an election under s. 9 "shall" be given within three months of the accident. The principle from *COPA* referred to above does not apply and therefore provincial legislation cannot restrict the operation of s. 9 of *GECA*.

[53] In summary, the statutory bar does not apply in this case. Parliament chose, in the circumstances outlined in s. 9 of *GECA*, to give to injured federal employees the right to sue a potentially liable third party. The fact that this right does not accord precisely with the scope of the statutory bar in the Alberta legislation is of no consequence. Parliament is free to legislate with respect to federal employees and entitled to choose different remedies. In s. 9, Parliament chose to enact a specific exception to its reliance on provincial compensation law. Further, the involvement of the provincial authority, and the application of the provincial legislation, depends on a claim

for compensation being made. Here there is no such claim. Therefore, the statutory bar in the Alberta *Workers' Compensation Act* does not apply.

CONCLUSION

[54] The defendants' application is dismissed. The plaintiff shall have her costs of this application.

VERTES J.