COURT OF APPEAL OF YUKON

Citation: *Hill v. Tomandl*,
2016 YKCA 5

Date: 20160607
Docket: 15-YU763

Between:

Linda Hill

Respondent
(Plaintiff)

And:

**Jason Tomandl, Ketza Construction Corp.,
SNC-Lavalin Group Inc., SNC-Lavalin Inc.,
SNC-Lavalin Operations and Maintenance Inc. operating as SNC-Lavalin O&M**

Appellants
(Defendants)

And:

Attorney General of Canada

Intervenor

Before: The Honourable Madam Justice Saunders
The Honourable Mr. Justice Groberman
The Honourable Madam Justice Shaner

On appeal from: An order of the Supreme Court of Yukon, dated July 23, 2015
(*Hill v. Tomandl*, 2015 YKSC 34, Whitehorse Docket No. 13-A0166)

Counsel for the Appellants Mr. Tomandl and Ketza Construction:	A.D. Schmit
Counsel for the SNC Appellants:	K.K. Kruse
Counsel for the Respondent:	D.L. Fendrick
Counsel for the Intervenor:	S.M. Duncan (written submissions only)
Place and Date of Hearing:	Whitehorse, Yukon November 17, 2015
Additional Written Submissions:	December 23, 2015

Place and Date of Judgment:	Vancouver, British Columbia June 7, 2016

Written Reasons by:
The Honourable Mr. Justice Groberman

Concurred in by:
The Honourable Madam Justice Saunders
The Honourable Madam Justice Shaner

Summary:

The respondent was injured in the course of her employment with the federal government in Whitehorse. She claims the injury was caused by a private sector worker employed at a construction site at her workplace. She made an election under the Government Employees Compensation Act to bring a civil suit against the worker, his employer, and a property management company instead of making a claim for workers' compensation under the Act. The defendants sought a declaration that her claim was barred by provincial or territorial workers' compensation legislation, either directly, or by incorporation into the federal regime. The chambers judge dismissed the application. Held: Appeal dismissed. Properly interpreted, the federal statute does not adopt the provincial bars on civil actions. The statutory bars do not apply directly to actions brought by federal government employees.

Reasons for Judgment of the Honourable Mr. Justice Groberman:

[1] The issue on this appeal is whether a person who is entitled to workers' compensation under the *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (the "*GECA*") is barred from bringing a civil action against persons who are "employers" and "workers" under provincial and territorial workers' compensation legislation.

Background

[2] Ms. Hill works for the Government of Canada at the Elijah Smith Building in Whitehorse. In April 2012, as she entered the building, she was struck on the head by a piece of wood that had fallen from the roof. She says that she suffered a concussion and post-concussion syndrome, and alleges that the accident was caused by the negligence of Mr. Tomandl, a construction worker employed by Ketza Construction. In addition to suing the worker and his employer, Ms. Hill also advances a claim against the SNC-Lavalin defendants, who were the managers of the building.

[3] Ketza Construction and the SNC-Lavalin companies are "employers" covered by the *Workers' Compensation Act*, S.Y. 2008, c. 12 (the "Yukon *WCA*"), and Mr. Tomandl is a "worker" under that statute.

[4] The defendants brought an application to strike the civil claim. They say that, for federal government workers in Yukon, the *GECA* incorporates a provision of the Alberta *Workers' Compensation Act*, R.S.A. 2000, c. W-15 that prevents actions for workplace injuries from being pursued against private sector employers and workers. In the alternative, they contend that provisions of the Yukon *WCA* or Alberta *WCA* apply directly, so as to bar the action.

The Statutory Framework

[5] The *GECA* is federal legislation that extends benefits analogous to those under provincial and territorial workers' compensation legislation to federal government employees. Since 1918, when the predecessor legislation was first enacted, the federal government has provided compensation to injured workers according to provincial compensation standards, and has contracted the administration of the scheme to provincial workers' compensation boards.

[6] Ms. Hill is an "employee" as that word is used in the *GECA*. As a result of her injuries, she was eligible for compensation under s. 4(1) of the statute:

> 4 (1) Subject to this Act, compensation shall be paid to
>
> (a) an employee who
>
> (i) is caused personal injury by an accident arising out of and in the course of his employment, ….
>
> (2) The employee … referred to in subsection (1) [is] … entitled to receive 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 respecting compensation for workmen … employed by persons other than Her Majesty, who
>
> (a) are caused personal injuries in that province by accidents arising out of and in the course of their employment ….
>
> (3) Compensation under subsection (1) shall be determined by
>
> (a) the same board, officers or authority as is or are established by the law of the province for determining compensation for workmen … employed by persons other than Her Majesty ….

[7] Section 5(1) of the statute deems federal government employees in Yukon to be employed in Alberta. For such employees, therefore, the rates and conditions of

compensation are determined under the Alberta *WCA*, and the scheme is administered by the Alberta Workers' Compensation Board.

[8] Section 12 of the *GECA* bars an employee who is eligible to receive compensation from bringing a civil claim against the federal Crown, its officers, servants, and agents. Section 9, however, preserves the employee's right to elect to bring an action against other persons instead of claiming compensation. At the date of the accident, the provision read as follows:

> 9 (1) Where an accident happens to an employee in the course of his employment under such circumstances as entitle the employee … to an action against a person other than Her Majesty, the employee …, if entitled to compensation under this Act, may claim compensation under this Act or may claim against that other person.

[9] In July 2012, Ms. Hill formally elected to pursue a civil action against the defendants instead of claiming compensation under the *GECA*. She commenced this action by filing a statement of claim against the defendants in March 2014.

[10] The Alberta *WCA* contains the following prohibition on the bringing of civil actions by injured workers:

> 23 (1) If an accident happens to a worker entitling the worker … to compensation under this Act, … the worker has [no] cause of action in respect of or arising out of the personal injury suffered by … 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 that caused or contributed to the injury arose out of and in the course of employment in an industry to which this Act applies.

[11] The Yukon *WCA* contains a similar bar:

> 50 (1) No action lies for the recovery of compensation and all claims for compensation shall be determined pursuant to this Act.
>
> (2) This Act is instead of all rights and causes of action, statutory or otherwise, to which a worker, a worker's legal personal representative, or a dependent of the worker is or might become entitled to against the employer of that worker or against another worker of that employer because of a work-related injury arising out of the employment with that employer.

> (3) If a worker suffers a work-related injury and the conduct of an employer who is not the worker's employer, or of a worker of an employer who is not the worker's employer, causes or contributes to the work-related injury, neither the worker who suffers the work-related injury, nor their personal representative, dependent, or employer, has any cause of action against that other worker or other employer.

[12] The question for determination in this case is whether the statutory bar in s. 23 of the Alberta statute (or, alternatively, the bar in s. 50 of the Yukon statute) is applicable to Ms. Hill's circumstances, either by incorporation into the scheme of the *GECA* or directly.

The Chambers Judge's Analysis

[13] The appellants' application for a declaration that Ms. Hill's claim against them was barred by statute was dismissed by the chambers judge. He was of the view, expressed at para. 38 of his judgment, that "Parliament chose, by enacting s. 9 of *GECA*, to provide an exception to the usual statutory bar found in most provincial compensation statutes."

[14] The judge was of the view that s. 9 of the *GECA* would be rendered nugatory if the provincial bars on claims against employers and workers were incorporated into the regime:

> [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.

[15] He concluded that, while the *GECA* adopts provincial measures of compensation and delegates administration of the compensation regime to the provincial board, it does not adopt all of the provisions of provincial legislation governing workers' compensation. In particular, he concluded that where an employee opts to proceed with a civil action rather than under the *GECA*, pursuant to s. 9 of that *Act*, the provincial legislation has no application at all.

[16] As I will indicate, I agree with the judge's conclusion that the *GECA* does not simply adopt provincial compensation schemes in whole. I also agree that it does not adopt the statutory bars that prevent injured workers from suing employers and workers, and that those bars are not directly applicable to claims by federal government employees. I do not, however, reach those conclusions by the same route followed by the trial judge. In particular, I do not agree with his suggestion that s. 9 of the *GECA* would be "stripped of all meaning and effect" if the provincial bars on suing employers and workers were imported into the federal scheme. Section 9 would still apply to causes of action against persons who were not employers or workers. Indeed, some provincial legislative schemes incorporate election provisions similar to s. 9 of the *GECA*, while also barring actions against employers and workers: see, for example, *Workers' Compensation Act*, R.S.B.C. 1996, c. 492, ss. 10(1) and 10(2); *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Sched. A, ss. 28 and 30.

Analysis

[17] The issue in this case is one of statutory interpretation. The initial question is the extent to which the *GECA* adopts by reference the provisions of provincial workers' compensation legislation. The appellants argue for an interpretation of the *GECA* that imports, essentially in whole, the compensation regimes of provincial statutes, including bars on suing employers. The respondent and the intervenor, on the other hand, argue that the adoption of provincial regimes is more limited. First, they say, the *GECA* does not engage provincial schemes *at all* unless a government employee elects to make a claim to compensation under the *GECA*. Second, they say that even when such a claim is made, the *GECA* only adopts provincial legislation insofar as it deals with conditions affecting entitlement to workers' compensation, rates of compensation, and administrative procedures.

[18] Both the appellant and the respondents refer to Elmer Driedger's "modern rule of interpretation" as the starting point for analysis. The rule is quoted at para. 21

of the Supreme Court of Canada's decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27:

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

[19] I am of the view that the *GECA*'s scheme and objects, particularly viewed in light of its legislative history, support an interpretation of the *GECA* that does not import by reference the provincial bars on civil claims.

[20] The only provision of the *GECA* that could arguably incorporate provincial bars on civil claims against employers and workers is s. 4(2). It provides that employees who have a right to compensation are entitled to receive it "at the same rate and *under the same conditions* as are provided under [provincial law]" (emphasis added).

[21] The question, then, is the scope of the word "conditions" in s. 4(2). Does it include all of the restrictions that apply to workers eligible for compensation under a provincial statute, or is it limited to the eligibility criteria for obtaining or continuing to receive compensation?

[22] It seems to me that both of these constructions accord with "grammatical and ordinary" senses of the word "conditions". In a broad sense, we might refer to all of the provisions governing compensation awards as "conditions" on compensation. Using the word "conditions" in this sense, it would encompass all of the terms of the relevant provincial statute – the entire basis on which compensation may be awarded under provincial law.

[23] "Conditions" may also be used in a narrower sense, to refer only to the eligibility criteria that must be satisfied before compensation is payable. Entitlement to compensation is "conditional" upon meeting the criteria.

[24] To determine whether s. 4 uses the term in a narrow or extended sense, it is necessary to consider the context of the statute, including its structure and its history and purpose.

Structure of the Statute

[25] The *GECA* is quite a concise statute, consisting of only sixteen sections. Section 4 is within a group of sections dealing with the payment of compensation. Separate portions of the statute deal with civil claims against third parties and against the Crown. Unlike s. 4, the sections specifically dealing with civil claims do not incorporate provisions of provincial law into the scheme of the *Act*. The manner in which the statute is structured, therefore, suggests that the incorporation of provincial legislation is for the limited purposes of determining eligibility for, and rates of, compensation.

[26] It is also noteworthy that the *GECA* does not simply provide a mechanism by which the federal government participates in provincial workers' compensation schemes. The federal government does not participate in the provincial accident funds by paying assessments, nor is workers' compensation paid directly from such accident funds. Instead, compensation payments under the *GECA*, and administrative costs associated with the compensation scheme, are paid directly from the consolidated revenue fund. The federal government, then, does not participate in provincial compensation schemes in the same way that other employers do. Rather, it operates its compensation scheme on a self-insurance model, using the provincial standards and administrative bodies only to determine the amount and nature of compensation.

[27] The *GECA* also contains specific provisions dealing with civil claims. Such provisions would not appear to have been necessary had the government intended that the limitations in provincial statutes would govern, as the provincial statutes provide a comprehensive framework governing civil claims.

[28] The structure of the *GECA* suggests, then, that the adoption of provincial conditions of compensation in s. 4 was intended to deal only with the criteria for determining eligibility for, and the amount of, benefits.

Legislative History and Jurisprudence

[29] In my view, the legislative history also supports the position espoused by the respondent. The history and purpose of workers' compensation in Canada was addressed succinctly by Sopinka J., speaking for the majority of the Supreme Court of Canada in *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890 at 907-908:

> [24] Workers' compensation is a system of compulsory no-fault mutual insurance administered by the state. Its origins go back to 19th century Germany, whence it spread to many other countries, including the United Kingdom and the United States. In Canada, the history of workers' compensation begins with the report of the Honourable Sir William Ralph Meredith, one-time Chief Justice of Ontario, who in 1910 was appointed to study systems of workers' compensation around the world and recommend a scheme for Ontario. He proposed compensating injured workers through an accident fund collected from industry and under the management of the state. His proposal was adopted by Ontario in 1914. The other provinces soon followed suit….
>
> [25] Sir William Meredith also proposed what has since become known as the "historic trade-off" by which 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. Similarly, employers were forced to contribute to a mandatory insurance scheme, but gained freedom from potentially crippling liability. Initially in Ontario, only the employer of the worker who was injured was granted immunity from suit. The Act was amended one year after its passage to provide that injured Schedule 1 workers could not sue <u>any</u> Schedule 1 employer. This amendment was likely designed to account for the multi-employer workplace, where employees of several employers work together.
>
> [26] The importance of the historic trade-off has been recognized by the courts. In *Reference re Validity of Sections 32 and 34 of the Workers' Compensation Act, 1983* (1987), 44 D.L.R. (4th) 501 (Nfld. C.A.), Goodridge C.J. compared the advantages of workers' compensation against its principal disadvantage: benefits that are paid immediately, whether or not the employer is solvent, and without the costs and uncertainties inherent in the tort system; however, there may be some who would recover more from a tort action than they would under the Act. Goodridge C.J. concluded at p. 524:
>
> > While there may be those who would receive less under the Act than otherwise, when the structure is viewed in total, this is but a negative

> feature of an otherwise positive plan and does not warrant the condemnation of the legislation that makes it possible.
>
> I would add that this so-called negative feature is a necessary feature. The bar to actions against employers is central to the workers' compensation scheme as Meredith conceived of it: it is the other half of the trade-off. It would be unfair to allow actions to proceed against employers where there was a chance of the injured worker's obtaining greater compensation, and yet still to force employers to contribute to a no-fault insurance scheme.
>
> [Emphasis in original.]

[30] While this general framework describes the development of provincial workers' compensation schemes in Canada, it is not an entirely accurate description of the development of the *GECA*.

[31] The *GECA* was first enacted as S.C. 1918, c. 15. By that time, provincial workers' compensation schemes were already in place. The purpose of the legislation was to provide a method of compensating federal government employees for workplace injuries so that they would not be disadvantaged in comparison with workers in the private sector. There was no "historic trade-off" inherent in the federal legislation. In its original enactment, the *GECA* did not contain any provision removing the employee's ability to bring a civil claim.

[32] The absence of any such trade-off is explicable. Unlike private sector employees, Crown employees did not have a general right to make civil claims against their employer at common law. The doctrine of Crown immunity from claims based in tort prevented such claims from being pursued.

[33] While there were some statutory exceptions to Crown immunity (such as s. 20(c) of the *Exchequer Court Act*, R.S.C. 1906, c. 140, which allowed persons who suffered injury or death on a "public work" to make claims for injuries resulting from the negligence of an officer or servant of the Crown), they were narrow in scope. The original enactment of the *GECA* did not in any way limit the rights of Crown employees to institute civil claims against the Crown in those limited circumstances where Crown immunity had been abrogated by statute: see *Canada v. Bender*, [1947] S.C.R. 172.

[34] In short, the *GECA* did not, in any way, reduce existing rights of employees. Rather, it was purely a benefit-conferring statute that did not impose any trade-off.

[35] Interestingly, the original enactment also did not contain any reference to "rates" or "conditions" of compensation. Instead, the statute provided that the employee was:

> entitled to the same compensation as the employee ... would, under similar circumstances, be entitled to receive under the law of the province in which the accident occurred, and the liability for and the amount of such compensation shall be determined in the same manner and by the same Board ….

[36] Given the language of the original enactment, it was difficult to contend that it adopted provincial bars on suing private-sector employers. The issue reached the Supreme Court of Canada in *Ching v. Canadian Pacific Railway*, [1943] S.C.R. 451. At 458, the Court rejected the contention that the federal statute incorporated a provincial prohibition against suing employers:

> The important words are: "And the liability for and the amount of such compensation shall be determined * * * in the same manner and by the same board." It is the liability of the Dominion Government to pay and the amount of the compensation, the right to which is given earlier in the section, which are to be determined; not the resulting effects upon collateral rights against third parties. To suggest, therefore, that the enactment of a special code of provisions with the powers of carrying them into administration without reference to the Provincial Board, is a submission in any sense of the term to a Provincial Act constituting another code, is to disregard the precise and individual character of the Dominion enactment.
>
> [Emphasis added.]

[37] In *Canada v. Bender*, the defendant attempted to distinguish *Ching*, arguing that the bar against suing employers enacted by s. 15 of the *Workmen's Compensation Act*, R.S.Q. 1941, c. 160 determined "the essential nature of the compensation payable under that Act and the liability imposed thereby." The Supreme Court of Canada disagreed, holding that s. 15 of the Quebec statute was not incorporated into the *GECA*.

[38] In 1947, the *GECA* was re-enacted, with several changes as S.C. 1947, c. 18. Section 3 of the 1947 statute provided an injured employee entitlement:

> to receive compensation at the same rate as is provided for an employee … of a person other than His Majesty, under the law of the province in which the accident occurred … for determining compensation in cases of employees other than of His Majesty, and the right to and the amount of such compensation shall be determined … under such law, and in the same manner and by the same board….

[39] The language of the 1947 *GECA* is reasonably clear in adopting provincial workers' compensation legislation only for the purpose of determining eligibility for, and the rate of, compensation. A provision similar to the current s. 9, allowing an injured employee to sue persons other than the Crown, was included in the 1947 statute, and the statute, for the first time, barred actions against the Crown and its servants.

[40] Substantial amendments were made to the *GECA* by S.C. 1955, c. 33. The current statutory regime has been in place, with only minor amendments, since that time. The 1955 legislation included, for the first time, a reference to compensation being "under the same conditions" as provided for in provincial legislation.

[41] Counsel have referred at some length to the debates in Parliament at the time the 1955 legislation was enacted. The Minister of Labour provided a detailed summary of changes from the existing legislation when the bill was introduced in the House of Commons, and provided similar details when the bill was considered by the Standing Committee on Industrial Relations. The senator who introduced the bill in the Senate also provided such details. There was no suggestion that the new legislation would curtail an employee's right to sue an employer or worker other than the Crown and its servants.

[42] In light of the definitive pronouncements of the Supreme Court of Canada in *Ching* and in *Bender*, it seems to me that any attempt to adopt provincial restrictions on suing employers would have been clearly articulated. There is nothing in the legislative history that suggests that that was the intent of the 1955 amendments.

[43] Subsequent jurisprudence is also of little assistance to the appellants. The Supreme Court of Canada considered aspects of the *GECA* in *Martin v. Alberta*

(Workers' Compensation Board), 2014 SCC 25. In that case, the issue was whether the Alberta Workers' Compensation Board, acting under the *GECA*, had authority to apply eligibility criteria derived from the provincial workers' compensation regime. The Supreme Court held that it did. Writing for a unanimous Court, Karakatsanis J. said:

> [23] … [Section] 4(2) provides that federal employees under the GECA are "entitled to receive 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". This provides parallel entitlements to all workers within a given province. Since provinces have the jurisdiction to enact their own legislation respecting workers' compensation, s. 4(2) contemplates that different "rates" and "conditions" of compensation will apply to federal workers in different provinces, depending on the law enacted in their province of employment. Thus, the consistency promoted is for all workers within a province — and not for federal workers throughout the country.
>
> [24] It would make little sense to defer to a provincial regime of compensation for the rates and conditions of compensation without also deferring on the question of eligibility, since those aspects of the regime are inevitably intertwined. "Conditions" for the receipt of compensation will determine whether or not an employee receives compensation. Thus, the "entitlement" under s. 4(2) to receive compensation "under the same conditions" as other employees in the province suggests that federal employees are entitled to receive compensation under the same circumstances. … [T]he legislative history clearly indicates that the reference to the "same conditions" was intended to indicate that the eligibility conditions for federal employees under the GECA were to be the same as under the provincial scheme.

[44] The appellants argue that *Martin* stands for the proposition that various different aspects of provincial workers' compensation legislation are inter-related, and that in referring to "conditions" in s. 4(2), Parliament intended to incorporate all aspects of provincial legislation into the federal scheme. I am unable to accept that interpretation of *Martin*. The case stands for the proposition that "conditions" of compensation include all eligibility criteria. It does not suggest that other aspects of provincial legislation, such as bars on the bringing of civil actions, are imported into the *GECA*.

[45] The appellants also refer to *Marine Services International v. Ryan Estate*, 2013 SCC 44, and particularly to paras. 33 and 38 of that decision. Paragraph 33 describes the *GECA* as being a scheme based on the "Meredith model". I read the

decision as saying no more than that the Federal Parliament, from 1947 onward, has chosen to adopt a no-fault regime of workers' compensation that prohibits federal government employees from suing the Crown. I do not think that *Marine Services* can be read as suggesting that the history of the *GECA* was one of trade-off, nor as suggesting that it must be read as adopting provincial workers' compensation regimes.

[46] Other appellate courts have considered s. 4 of the *GECA*. Their decisions are consistent with the idea that s. 4 incorporates only provincial laws governing eligibility and level of compensation. In *Canada (Attorney General) v. Ahenakew (c.o.b. Ahenakew Trenching)*, [1984] 3 W.W.R. 442 (Sask. Q.B.)(appeal dismissed on other grounds, [1986] 4 W.W.W. 230 (Sask. C.A.)), the Federal Crown brought a subrogated claim against an employer as a result of an injury to a federal employee. The defendant argued that such a claim was precluded by s. 4 of the *GECA*. The trial judge rejected the argument at 462-63:

> I agree that one legislative body may adopt the legislation of another such body: see *A.G. Ont. v. Scott*, [1956] S.C.R. 137, 114 C.C.C. 224, 1 D.L.R. (2d) 433, and *Coughlin v. Ont. Highway Tpt. Bd.*, [1968] S.C.R. 569, 68 D.L.R. (2d) 384. 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.

[47] The Saskatchewan Court of Appeal, in brief reasons on the issue, agreed that s. 4 of the *GECA* did not preclude the claim from being advanced.

[48] In *Société canadienne des postes v. Rochon* (1986), 136 D.L.R. (4th) 187, the Quebec Court of Appeal considered the question of whether provisions of the *Act Respecting Industrial Accidents and Occupational Diseases*, R.S.Q., c. A-3.001

aimed at preventing employer retaliation for employee exercises of rights were incorporated into the *GECA*. At 198, the Court held that the provincial provisions were not adopted by the *GECA*:

> The meaning of "… compensation … under the same conditions …" read in the context of s. 4(2) of the federal statute, in my view, refers to such matters as eligibility for compensation, waiting periods, medical examinations, medical treatment and related care, as well as frequency and duration of payments, treatment and care. I do not consider it a condition to receive compensation within the meaning of s. 4(2) to be able to make a complaint under s. 32 of the Provincial Law.
>
> The French text of the federal statute is helpful in specifically stating that the word "conditions" in French refers to the right to the compensation: "Les agents de l'État … *ont droit à l'indemnité* prévue par la legislation – *aux taux et conditions qu'elle fixe* – de la province où les agents exercent habituellement leurs fonctions …".
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> [Emphasis by Quebec CA.]

[49] In *Canada Post Corp. v. Smith* (1998), 159 D.L.R. (4th) 283 (Ont. C.A.), the issue was whether compensation under the *GECA* was limited to monetary compensation. The Ontario Court of Appeal held that it was not:

> [36] The purpose of the GECA, reinforced in s. 4(2), remains essentially what it was in 1918: to provide compensation for injured federal employees in accordance with entitlements available in the province they work.
>
> [37] Had s. 4(2) referred only to compensation "at the same rate" as provincial law, Canada Post's argument that the word "benefits" in the s. 2 definition of compensation means only monetary benefits, might have been more persuasive. But the inclusion of the phrase "and under the same conditions" implies an interpretation wider than merely monetary payments.
>
> [38] The definition of compensation in s. 2 in the GECA and the enunciation of compensation parity with injured provincial employees in s. 4(2) do not restrict the scope of benefits available under provincial law; rather, they confirm the primacy of provincial law in determining that entitlement. It is, in fact, the combined effect of the definition in s. 2 wide enough on its face to embrace non-monetary benefits; the reiteration in s. 4(2) that compensation be "under the same conditions" as provincial law; and the legislative intention that compensation be the same for injured federal employees working in a province as for other injured workers in that province, that suggests that entitlements to compensation under the GECA are to be awarded in accordance with provincial legislation.

[50] Similarly, in *Cape Breton Development Corporation v. Estate of James Morrison*, 2003 NSCA 103, the Nova Scotia Court of Appeal held that a provision of

provincial legislation governing the burden of proof in injury claims was applicable to claims under the *GECA*.

[51] In my view, both *Smith* and *Cape Breton Development Corporation* stand simply for the proposition that legislative provisions in provincial legislation governing eligibility for compensation are incorporated into the *GECA* regime. Nothing in those cases suggests that s. 4(2) incorporates into the *GECA* regime provisions of provincial law other than those directed at eligibility for, and scope of, compensation benefits. In my view, both the contextual indicators in the statute and the legislative history confirm that s. 4(2) does not incorporate restrictions in provincial statutes on the bringing of civil claims.

[52] I also reject the appellants' suggestion that the bar on civil claims is so intertwined with eligibility to and scope of compensation as to be integral to the provincial scheme. As I see it, the restrictions on civil claims against employers and workers, is a function of the fact that compensation from provincial legislative schemes comes from an accident fund that is funded by assessments on all employers. Compensation payments under the *GECA* are not funded from the provincial accident funds; rather, they are funded directly from the Crown's consolidated revenue fund.

Do the Provincial Statutes Apply Directly?

[53] The appellants have also suggested, without detailed submissions, that the Alberta *WCA* or Yukon *WCA* may apply to Ms. Hill directly, so as to bar this action. In my view, such an argument cannot succeed.

[54] The case before us has no connection to Alberta, except the connection that arises from s. 5 of the *GECA*, which deems employees in Yukon to be usually employed in Alberta "for the purposes of this Act". The language of the *GECA* is clear. The deeming provision only applies for the purposes of the statute itself, and not for all purposes. The Alberta *WCA* cannot, therefore, apply directly to Ms. Hill's claim.

[55] Similarly, the Yukon *WCA* does not bar this action from being pursued. Ms. Hill has no claims to compensation under that statute, so its remedies cannot stand instead of her other rights. As a federal employee, she is not a "worker" under that statute. In short, as an employee subject to the *GECA*, Ms. Hill is not directly governed by the territorial legislation: see *Ching* at 456-7.

Conclusion

[56] While I do so for somewhat different reasons than the chambers judge, I agree with his conclusion that neither the Alberta *WCA* nor the Yukon *WCA*, prohibit Ms. Hill from pursuing this action. Accordingly, I would dismiss the appeal, with costs to the respondent.

"The Honourable Mr. Justice Groberman"

I AGREE:

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Madam Justice Shaner"