

## CASE LAW UPDATE

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### *Quebec (Attorney General) v Canada (Human Resources and Social Development)*

2011 SCC 60 (Released December 8, 2011)

#### **Constitutional law – Federal paramountcy – Crown immunity**

After an industrial accident, Rock Bruyère received income replacement benefits from the Commission de la santé et de la sécurité du travail ("**Commission**"). Pursuant to s. 126(4) of the *Employment Insurance Act*, SC 1996, c 23 ("**EIA**"), the Commission garnished his benefits to recover benefit overpayments that Mr. Bruyère had received. He challenged the remittance on the basis that his income replacement benefits were protected from seizure by s. 144 of the *Act respecting industrial accidents and occupational diseases*, RSQ, c A-3.001 ("**AIAOD**").

The Superior Court's ruling that the Commission had acted improperly was set aside on appeal. The Quebec Court of Appeal found there was a conflict between the Commission's right to require payment and the province's prohibition against seizure of income replacement benefits. The Court of Appeal declared the provincial provision to be inoperative.

Justice Deschamps, writing for the Supreme Court, upheld the Court of Appeal's decision.

The Court began by addressing the relationship between the Crown immunity rule and the doctrine of federal paramountcy. As a matter of judicial policy, the case law has established that the Court should first consider arguments based on the federal paramountcy doctrine, except if precedents justify applying the doctrine of interjurisdictional immunity to find that a provision is inapplicable. Justice Deschamps held that the erosion of the privilege of Crown immunity, the numerous exceptions to the rule, and the tendency of the federal Crown to benefit disproportionately were among the reasons why the paramountcy doctrine should be considered first. The Court concluded that "where a case can be decided without recourse to Crown immunity, the court should generally give preference to the other grounds raised by the parties".

The doctrine of federal paramountcy will apply where there is either an operational conflict or a conflict of intentions between federal and provincial laws. The Court found that an operational conflict did not exist in this case but considered whether there was a conflict of purposes, by reviewing each provision in context and looking at its legislative purpose.

The Court held that Parliament granted the Commission a "freestanding positive right to proceed by way of a requirement to pay rather than by way of seizure", which was intended to protect the integrity of the employment insurance system. This recovery mechanism was also intended to be independent from provincial exemption provisions such as s.144 of the AIAOD.

Justice Deschamps held that the Court must defer to Parliament's policy decision to prefer the overall integrity of the employment insurance system to the needs of individuals. The Commission was given the positive right to recover benefit overpayments through this mechanism, and the right was not constrained by provincial prohibitions on seizure. The Court held there was a real conflict between the purposes of the two provisions, and declared the provincial provision to be inoperative. The appeal was dismissed.

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