



SUPREME COURT OF CANADA

CITATION: Martin v. Alberta (Workers' Compensation Board), 2014 **DATE:** 20140328
SCC 25 **DOCKET:** 35052

BETWEEN:

Douglas Martin

Appellant

and

Workers' Compensation Board of Alberta, Appeals Commission for Alberta

Workers' Compensation and Attorney General of Canada

Respondents

- and -

Workers' Compensation Board of British Columbia, Commission de la santé et

de la sécurité du travail and Workers' Compensation Board of Nova Scotia

Interveners

CORAM: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and
Wagner JJ.

REASONS FOR JUDGMENT: Karakatsanis J. (McLachlin C.J. and LeBel, Abella,
(paras. 1 to 63) Rothstein, Cromwell and Wagner JJ. concurring)

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MARTIN v. ALBERTA (WORKERS' COMPENSATION BOARD)

Douglas Martin

Appellant

v.

**Workers' Compensation Board of Alberta,
Appeals Commission for Alberta Workers' Compensation
and Attorney General of Canada**

Respondents

and

**Workers' Compensation Board of British Columbia,
Commission de la santé et de la sécurité du travail and
Workers' Compensation Board of Nova Scotia**

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2014 SCC 25

File No.: 35052.

2013: December 10; 2014: March 28.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Workers' compensation — Entitlement to compensation — Worker claiming compensation due to chronic onset stress — Provincial policy imposing criteria for eligibility for compensation on chronic onset stress claims — Whether provincial policy applies in determining eligibility under Government Employees Compensation Act — Whether provincial policy conflicts with Government Employees Compensation Act — Whether denial of claim was reasonable — Government Employees Compensation Act, R.S.C. 1985, c. G-5, ss. 2 and 4 — Workers' Compensation Act, R.S.A. 2000, c. W-15, s. 1 — Workers' Compensation Board of Directors' Policy 03-01, Part II, Application 6.

M, an employee of Parks Canada, was notified that disciplinary action would result if he did not provide an adequate response to a request filed under access to information legislation. M alleged that this letter, following the stress of years of conflict over another workplace issue, triggered a psychological condition. He initiated a claim for compensation for chronic onset stress.

Under s. 4 of the *Government Employees Compensation Act*, R.S.C., 1985, c. G-5 (*GECA*), federal workers who suffer workplace injuries are entitled to compensation at the same rate and under the same conditions as provided under the provincial law where the employee is usually employed, and compensation is determined by the same board, officers or authority as determine compensation under provincial law. The *GECA* and the *Workers' Compensation Act*, R.S.A. 2000,

c. W-15 (*WCA*), both define “accident” as including a wilful and intentional act of someone other than the claimant and a fortuitous or chance event occasioned by a physical or natural cause. Alberta’s Workers’ Compensation Board of Directors’ Policy 03-01, Part II, Application 6 (Policy) made under the *WCA* identifies four criteria which must be met in order to establish eligibility for compensation for chronic onset stress. The third and fourth criteria require that the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation and that there is objective confirmation of the events.

M’s claim was denied by the Alberta Workers’ Compensation Board, the Dispute Resolution and Decision Review Body, and the Appeals Commission for the Alberta Workers’ Compensation Board (Commission) on the basis that it did not meet the third and fourth criteria set out in the Policy. On judicial review, the Alberta Court of Queen’s Bench concluded that s. 4(1) of the *GECA* set out a complete eligibility test for federal workers and the provincial Policy did not apply. The matter was returned to the Commission to be determined solely by the *GECA*. The Alberta Court of Appeal restored the Commission’s decision, finding that the provincial Policy did apply.

Held: The appeal should be dismissed.

In enacting the *GECA*, Parliament intended that provincial boards and authorities would adjudicate the workers’ compensation claims of federal government

employees — including both entitlement to and rates of compensation — according to provincial law, except where the *GECA* clearly conflicts with provincial legislation. Where Parliament intended to impose different conditions, it has done so expressly. Where a direct conflict with the provincial law exists, the *GECA* will prevail, rendering that aspect of the provincial law or policy inapplicable to federal workers. This interpretation is supported by the text of s. 4, the scheme and history of the *GECA*, and Parliament's stated intentions.

In this case, the provincial Policy's interpretation of "accident" in the context of psychological stress claims does not conflict with the *GECA*. The *GECA*'s permissive and flexible definition of "accident" is consistent with Parliament's intention to delegate the administration of workers' compensation to the provincial agencies, and enables different provinces to define eligibility for compensation differently. In determining whether a worker's chronic onset stress was caused by an accident arising out of and in the course of employment, it was not inconsistent with the *GECA* or unreasonable for Alberta to require that the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation and that there is objective confirmation of the events. Those requirements reflect Alberta's interpretation of "accident" in the context of psychological stress claims.

The Commission's decision to deny compensation in this case was reasonable. It was open to the Commission to find that the predominant cause of M's

psychological injury was his reaction to a letter from his employer requesting compliance with an access to information request, and that such a request was not excessive or unusual in terms of normal pressures and tensions in a similar occupation.

Cases Cited

Referred to: *Rees v. Royal Canadian Mounted Police*, 2005 NLCA 15, 246 Nfld. & P.E.I.R. 79, leave to appeal refused, [2005] 2 S.C.R. x; *Stewart v. Workplace Health, Safety and Compensation Commission*, 2008 NBCA 45, 331 N.B.R. (2d) 278; *Canada Post Corp. v. Smith* (1998), 40 O.R. (3d) 97, leave to appeal refused, [1998] 3 S.C.R. v; *Thomson v. Workers' Compensation Appeals Tribunal*, 2003 NSCA 14, 212 N.S.R. (2d) 81; *Canadian Broadcasting Corp. v. Luo*, 2009 BCCA 318, 273 B.C.A.C. 203; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Cape Breton Development Corp. v. Morrison Estate*, 2003 NSCA 103, 218 N.S.R. (2d) 53, leave to appeal refused, [2004] 1 S.C.R. vii; *McLellan v. Workers' Compensation Appeals Tribunal*, 2003 NSCA 106, 218 N.S.R. (2d) 176; *Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44; *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890; *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190.

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Act to amend the Government Employees Compensation Act, S.C. 1931, c. 9, s. 2.

Act to amend the Government Employees Compensation Act, S.C. 1955, c. 33, s. 2.

Act to provide Compensation where Employees of His Majesty are killed or suffer injuries while performing their duties, S.C. 1918, c. 15, s. 1(1).

Canadian Charter of Rights and Freedoms.

Government Employees Compensation Act, R.S.C. 1985, c. G-5, ss. 2 “accident”, 4(1), (2), (3).

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Government Employees Compensation Regulations 1948 (Pulmonary Tuberculosis), SOR/48-573.

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Workers Compensation Act, C.C.S.M. c. W200, s. 51.1(1)(a).

Workers Compensation Act, R.S.B.C. 1996, c. 492, s. 99(2).

Workers Compensation Act, R.S.P.E.I. 1988, c. W-7.1, s. 30(1).

Workers’ Compensation Act, R.S.A. 2000, c. W-15, ss. 1(1) “accident”, 8(3)(c), (d), 13.2(6).

Workers’ Compensation Act, S.N.S. 1994-95, c. 10, s. 183.

Workers’ Compensation Act, S.N.W.T. 2007, c. 21, s. 91(3).

Workers’ Compensation Act, S.Nu. 2007, c. 15, s. 31(2).

Workers’ Compensation Act, S.Y. 2008, c. 12, ss. 3 “policy”, 18.

Workers’ Compensation Act, 2013, S.S. 2013, c. W-17.11, s. 23(2).

Workplace Health, Safety and Compensation Act, R.S.N.L. 1990, c. W-11, s. 5(1)(a).

Workplace Health, Safety and Compensation Commission Act, S.N.B. 1994, c. W-14, s. 7(f).

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, ss. 126, 161.

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APPEAL from a judgment of the Alberta Court of Appeal (Fraser C.J. and Watson and McDonald JJ.A.), 2012 ABCA 248, 65 Alta. L.R. (5th) 220, 536 A.R. 121, 353 D.L.R. (4th) 499, [2012] 11 W.W.R. 1, 1 C.C.E.L. (4th) 193, [2012] A.J. No. 879, 2012 CarswellAlta 1444, allowing an appeal from a decision of Ouellette J., 2010 CarswellAlta 2817, which set aside a decision of the Appeals Commission for Alberta Workers' Compensation, 2009 CanLII 66292, and ordered a reconsideration. Appeal dismissed.

Andrew Raven, Andrew Astritis and Amanda Montague-Reinholdt, for the appellant.

Douglas R. Mah, Q.C., and Ron Goltz, for the respondent the Workers' Compensation Board of Alberta.

Sandra Hermiston, for the respondent the Appeals Commission for Alberta Workers' Compensation.

John S. Tyhurst, for the respondent the Attorney General of Canada.

Laurel M. Courtenay and Scott A. Nielsen, for the intervener the Workers' Compensation Board of British Columbia.

Pierre Michel Lajeunesse and Lucille Giard, for the intervener Commission de la santé et de la sécurité du travail.

Roderick (Rory) H. Rogers, Q.C., and Madeleine F. Hearn, for the intervener Workers' Compensation Board of Nova Scotia.

The judgment of the Court was delivered by

KARAKATSANIS J. —

I. Introduction and Overview

[1] The appellant, an employee of Parks Canada, initiated a claim for workers' compensation. Under the federal *Government Employees Compensation Act*, R.S.C. 1985, c. G-5 (*GECA*), federal workers who suffer workplace injuries are entitled to compensation "at the same rate and under the same conditions" as provided under the provincial law where the employee is usually employed: s. 4(1) and (2). The compensation is determined by "the same board, officers or authority" as determine compensation under provincial law: s. 4(3). The appellant's claim was denied by the Appeals Commission for the Alberta Workers' Compensation Board (Commission), 2009 CanLII 66292, because it did not meet all the criteria set out in Alberta's Workers' Compensation Board of Directors' Policy 03-01, Part II, Application 6 (Policy) (online) authorized under the *Alberta Workers' Compensation Act*, R.S.A. 2000, c. W-15 (*WCA*). The Alberta Court of Appeal found that the provincial Policy applied to Mr. Martin's claim and restored the Commission's denial of compensation.

[2] The main issue in this appeal is whether the *GECA* requires the provincial boards to apply provincial law and policy to determine entitlement to workers' compensation. Provincial courts of appeal have reached competing conclusions on this question. Some have concluded that the *GECA* provides a complete code of

eligibility for federal workers' compensation.¹ Others, like the Alberta Court of Appeal in this case, have concluded that eligibility for compensation under the *GECA* is determined in accordance with provincial rules.²

[3] I would dismiss the appeal. The provincial boards and authorities are required under the *GECA* to apply their own provincial laws and policies, provided they do not conflict with the *GECA*. I conclude that the Commission's decision to reject the claim was reasonable.

II. Background Facts

[4] The appellant, Douglas Martin, began employment with Parks Canada as a park warden in 1973. In 2000, he commenced a health and safety complaint against Parks Canada, arguing that wardens should be armed when carrying out law enforcement duties. This complaint generated various internal complaint processes, court cases and appeals. The appellant felt that he suffered a loss of work, training and promotion opportunities as a result of his leadership role in the dispute.

¹ See, for example, *Rees v. Royal Canadian Mounted Police*, 2005 NLCA 15, 246 Nfld. & P.E.I.R. 79, at para. 31, leave to appeal refused, [2005] 2 S.C.R. x; *Stewart v. Workplace Health, Safety and Compensation Commission*, 2008 NBCA 45, 331 N.B.R. (2d) 278, at para. 10.

² *Canada Post Corp. v. Smith* (1998), 40 O.R. (3d) 97, at pp. 109 and 111, leave to appeal refused, [1998] 3 S.C.R. v; *Thomson v. Workers' Compensation Appeal Tribunal*, 2003 NSCA 14, 212 N.S.R. (2d) 81, at para. 18; *Canadian Broadcasting Corp. v. Luo*, 2009 BCCA 318, 273 B.C.A.C. 203, at paras. 22 and 40.

[5] In June 2006, Parks Canada received a request under access to information legislation. It instructed the appellant to disclose information relating to data on his work computer so that it could comply with the request. Parks Canada was not satisfied that the appellant had responded adequately. On December 18 of that year, he received a letter notifying him that if he did not provide further response to the request by December 13 (five days prior to receiving the letter), disciplinary action would result.

[6] The appellant already had a written reprimand on his file and feared that the next disciplinary action would be dismissal. He alleged that the letter, following the stress of years of conflict over the health and safety issue, triggered a psychological condition. He took medical leave beginning December 23, 2006, consulted medical professionals for treatment, and initiated a claim for compensation for chronic onset stress the following month.

III. Proceedings Below

[7] The appellant's claim was denied by three levels of workers' compensation authorities — the Alberta Workers' Compensation Board (WCB), the Dispute Resolution and Decision Review Body, and the Commission — on the basis that it did not meet the criteria set out in the Policy related to chronic onset stress. In particular, the Commission held that his claim failed to meet the third and fourth provincial Policy criteria — namely, that the “work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the

average worker in a similar occupation” and that “there is objective confirmation of the events” (A.A., at p. 56).

[8] On judicial review, the Alberta Court of Queen’s Bench concluded that the provincial Policy did not apply, and therefore set aside the decision and returned the matter to the Commission. As a federal employee, the appellant’s eligibility for compensation was to be determined solely under the *GECA*, which was designed to ensure that all federal government employees in Canada are subject to the same rules. The third and fourth eligibility criteria imposed by the Policy were improper extra hurdles which were inconsistent with the *GECA*.

[9] The Alberta Court of Appeal (2012 ABCA 248, 65 Alta. L.R. (5th) 220 (Fraser C.J. and Watson and McDonald JJ.A.)) restored the Commission’s decision (para. 84), the majority reasoning that Parliament had intended to rely upon provincial eligibility criteria, and the Policy criteria did not conflict with the federal *GECA* (paras. 4-8, 30-33, 35-47 and 51).

IV. Analysis

A. *Issues*

[10] This appeal gives rise to three issues. First, was the Commission entitled to apply provincial policy in determining eligibility under the federal *GECA*? Second, if so, did the particular Policy in this case conflict with the definition of

“accident” in the *GECA*? Third, was the Commission’s denial of the claim in this case reasonable?

B. *Standard of Review*

[11] The appropriate standard of review in this case is reasonableness. Section 4 of the *GECA* gives the provinces broad authority to determine the compensation claims of federal workers, in effect rendering the *GECA* a “home” or “constituent” statute for the provincial tribunals. The presumption of reasonableness where an administrative tribunal interprets a “home” or “constituent” statute is not displaced here as the question of law is not of central importance to the legal system and is squarely within the specialized functions of workers’ compensation tribunals: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers’ Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 30. As discussed below, Parliament intended that provinces would generally adjudicate claims according to provincial law, resulting in the potential for different applications of the *GECA* from province to province.

[12] With respect to the adjudication of Mr. Martin’s claim more specifically, the issue is one of mixed fact and law and this expert tribunal is entitled to deference.

C. *Relevant Statutory Provisions*

[13] The relevant provisions of the *GECA* and the *WCA* are as follows:

Government Employees Compensation Act, R.S.C. 1985, c. G-5

2. [Definitions] In this Act,

“accident” includes a wilful and an intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause.

...

4. [Persons eligible for compensation] (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, or

(ii) is disabled by reason of an industrial disease due to the nature of the employment; and

(b) the dependants of an employee whose death results from such an accident or industrial disease.

(2) [Rate of compensation and conditions] The employee or the dependants referred to in subsection (1) are, notwithstanding the nature or class of the employment, 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 and the dependants of deceased 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; or

(b) are disabled in that province by reason of industrial diseases due to the nature of their employment.

(3) [Determination of compensation] 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 and dependants of deceased workmen employed by persons other than Her Majesty; or

(b) such other board, officers or authority, or such court, as the Governor in Council may direct.

Workers' Compensation Act, R.S.A. 2000, c. W-15

1(1) [Interpretation] In this Act,

(a) “accident” means an accident that arises out of and occurs in the course of employment in an industry to which this Act applies and includes

(i) a wilful and intentional act, not being the act of the worker who suffers the accident,

(ii) a chance event occasioned by a physical or natural cause,

(iii) disablement, and

(iv) a disabling or potentially disabling condition caused by an occupational disease;

D. *Does the Provincial Policy Apply in Determining Eligibility Under the GECA?*

[14] The primary issue in this appeal addresses the nature of the relationship between the *GECA* and provincial workers' compensation law: if and when provincial workers' compensation legislation, such as the Alberta *WCA*, can be used to determine eligibility for compensation under the *GECA*.

(1) Submissions of the Parties

[15] The appellant argues that s. 4(1) of the *GECA* sets out a complete eligibility test. Parliament intended to subject all federal employees to the same eligibility standard, but to have the amount of compensation be determined by each province. Thus, a worker governed by the *GECA* who suffers injury as a result of a work-related accident is entitled to compensation, without reference to any provincial law or policy respecting eligibility. Section 4(1) and the definition of “accident” in the *GECA* would be redundant if provincial legislation governed to determine eligibility for compensation. The question is whether the stress at issue is an injury by “accident” within the meaning of the *GECA*.

[16] The respondent the WCB submits that its authority to determine compensation for federal employees under s. 4 of the *GECA* includes the power to make policies in respect of compensation, including eligibility. The *GECA* provides an efficient system of compensation for federal employees consistent with that of provincial workers; the interplay between the *GECA* and the *WCA* is a positive example of cooperative federalism. Section 4(2), which directs that federal employees are to receive compensation “at the same rate and under the same conditions” as provincial employees, refers to both entitlement and quantum of benefits.

[17] The respondent the Attorney General of Canada contends that the intention of the *GECA* is to incorporate provincial law into the assessment of both

eligibility and rate of compensation. The *GECA* was intended to create parity between workers within a province and to rely on provincial law and administration. Where Parliament intended to distinguish part of the *GECA* from the various provincial Acts, it has done so expressly. Therefore, except in those few situations where it conflicts with the *GECA*, provincial law determines issues of compensation.

(2) Analysis

[18] “[T]he 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” (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87).

[19] For the reasons that follow, I conclude that the Commission was required to apply provincial law and policy to determine the entitlement to and rate of compensation for an employee governed by the *GECA*. The *GECA* incorporates provincial workers’ compensation regimes, except where they conflict with the *GECA*. It creates an efficient and consistent system so that federal and other workers within a province are generally compensated at the same rates and under the same conditions. Where Parliament intended to impose different conditions, it has done so expressly.

(a) *The Text and Scheme of the Provisions*

[20] Section 4(1) of the *GECA* is a general provision which provides that compensation is to be paid to employees who are caused personal injury due to a workplace accident, and to their dependents if death results: “Subject to this Act, compensation shall be paid to . . . an employee who . . . is caused personal injury by an accident arising out of and in the course of his employment . . .”. In my view, this does not suggest that the provision is a complete code for determining eligibility for compensation. Compensation is “[s]ubject to this Act”. Neither the words “eligibility” nor “entitlement” appear in s. 4(1). Marginal notes are not part of the provision and are not determinative of the meaning of the section: *Interpretation Act*, R.S.C. 1985, c. I-21, s. 14.

[21] Although the injury must be caused by an “accident”, the broad and open-ended definition of “accident” in s. 2 of the *GECA* provides only two categories of events which will constitute accidents: it “includes” both “wilful” and “intentional” acts of others and “fortuitous event[s]”. No standard or rule is provided in the definition of “accident” — or in s. 4(1) — by which to determine what categories of “act[s]” or “event[s]” may constitute “accident[s]”, when such acts are “arising out of and in the course of . . . employment” or to address when an injury is “caused” by an accident.

[22] Read as a whole and in context, s. 4 supports the interpretation that the criteria for entitlement are not specified in the *GECA* and are to be determined according to provincial workers’ compensation law and authorities.

[23] First, s. 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. As I observe below, the 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.

[25] The parallel language used in ss. 4(1) and 4(2) further links eligibility for compensation of federal employees to the provincial scheme. Under s. 4(1),

compensation shall be paid to a federal employee who “is caused personal injury by an accident arising out of and in the course of his employment”. Section 4(2) states that federal employees are entitled to compensation as provided for workers under provincial jurisdiction who are “caused personal injuries in that province by an accident arising out of and in the course of their employment”. This mirroring of the language suggests that federal employees receive compensation in the same circumstances as fellow workers in the province where they work for injuries “caused . . . by an accident arising out of and in the course of . . . employment”.

[26] Section 4(3) provides that “[c]ompensation under subsection (1) shall be determined by . . . the same board, officers or authority as is or are established by the law of the province for determining compensation for [workers under provincial jurisdiction]”. As with s. 4(2), this provision contemplates that boards or authorities may determine compensation differently from province to province.

[27] Thus, the text of the *GECA* suggests that s. 4(1) does not set out a complete test for eligibility for compensation. Section 4(1) simply states that federal workers injured in accidents on the job are to be compensated subject to the *GECA*. The broad and open-ended definition of “accident” in s. 2 does not assist in determining the boundaries of entitlement. It is far more likely that Parliament intended to rely on provincial laws defining the scope of “accident” to provide some certainty. The authority granted in s. 4(2) and (3) is itself strongly indicative of such a role. According to s. 4(2), federal workers are entitled to the rates and conditions of

compensation determined according to provincial law. And in s. 4(3), the *GECA* clearly delegates to the provincial boards the actual *determination* of compensation under s. 4(1). Provincial institutions and laws thus provide the structure and boundaries necessary to determine whether and how much compensation is to be paid to federal employees.

(b) *Legislative Purpose*

[28] The history of the text of the *GECA* as well as Parliament's stated intentions clearly demonstrate that Parliament's purpose in enacting the *GECA* was to rely on provincial laws and provincial boards to determine federal workers' compensation claims, except where the *GECA* clearly conflicts with provincial legislation.

[29] The *GECA*'s predecessor statute was enacted in 1918: *An Act to provide Compensation where Employees of His Majesty are killed or suffer injuries while performing their duties*, S.C. 1918, c. 15. According to s. 1(1) of the initial Act, both "the liability for and the amount of such compensation" were to be determined under provincial law and by provincial authorities:

1. (1) An employee in the service of His Majesty who is injured, and the dependents of any such employee who is killed, shall be entitled to the same compensation as the employee, or as the dependent of a deceased employee, of a person other than His Majesty 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, officers or authority, as that established by the law of the province for determining compensation in similar cases, or by such other Board, officers or authority or by such court as the Governor in Council shall from time to time direct.

[30] Indeed, the Minister responsible for the initial Act described it as ensuring that “[i]n case of injury, an employee of the Government railway will be in exactly the same position in regard to compensation as would the employee of a railway company” (Hon. J. D. Reid, *House of Commons Debates*, vol. 132, 1st Sess., 13th Parl., April 16, 1918, at p. 812 (emphasis added)).

[31] In 1947, the words “the liability for” were replaced by the phrase “the right to” compensation (S.C. 1947, c. 18, s. 3(1)). Both phrases plainly refer to a worker’s entitlement to, or eligibility for, compensation. The definition of “accident” was also added at that time — without any particular discussion in Parliament.

[32] In 1955, the present phrase was adopted, stating that federal employees are 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 (S.C. 1955, c. 33, s. 2). During first reading of these amendments, the Minister responsible stated:

The proposed amendments provide that the entitlement to and rates of compensation payable to an employee under the act shall be determined in accordance with and under the same circumstances as are provided under the law of the province where the employee is usually employed . . . [Emphasis added.]

(Hon. Milton F. Gregg, *House of Commons Debates*, vol. II, 2nd Sess., 22nd Parl. February 28, 1955, at p. 1561)

[33] The phrase “under the same conditions” appears to have directly replaced the earlier references to “the liability for” and “the right to” compensation. And as the legislative debates made clear, these were to be determined by provincial law and adjudicative bodies.

[34] In providing that provincial law and authorities were to determine compensation for federal government workers, Parliament expressly recognized that “[c]laims arising from accidents or otherwise are handled differently according to the provinces” (Hon. Lionel Chevrier, *House of Commons Debates*, vol. II, 3rd Sess., 20th Parl., March 27, 1947, at p. 1824) and that “[t]he right to compensation and the amount of it in each case are decided by the provincial workmen’s compensation board under the statute of the province concerned” (Hon. Milton F. Gregg, *House of Commons Debates*, vol. II, 6th Sess., 21st Parl., May 7, 1952, at p. 1974 (emphasis added)).

[35] In short, the legislative history of the *GECA* and statements of parliamentary purpose demonstrate that the intent has remained consistent since 1918: both eligibility for and the rate of compensation are to be determined according to provincial law.

(c) *Conflicts Between the GECA and Provincial Legislation*

[36] As can be seen from the legislative history, Parliament also intended to enact specific exceptions to its reliance on provincial law.

[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] Potential conflicts between the *GECA* and provincial workers' compensation legislation were discussed in *Cape Breton Development Corp. v. Morrison Estate*, 2003 NSCA 103, 218 N.S.R. (2d) 53, leave to appeal refused, [2004] 1 S.C.R. vii.

[39] The issue in *Morrison* was whether a "benefit of the doubt" presumption in the Nova Scotia workers' compensation legislation applied to workers who fell

under the *GECA*. The Nova Scotia Court of Appeal held that the presumption with respect to causation in the provincial Act applied to federal workers as well. The court held that there was no conflict between the two statutes, as there was no language in the *GECA* to exclude federal workers from the benefit of such a presumption (para. 45).³ The court adopted the Attorney General of Canada's description of the legislative landscape, concluding that:

The provincial workers' compensation scheme governs claims submitted under *GECA* provided that:

(a) the provision in issue is reasonably incidental to a "rate" or "condition" governing compensation under the law of the province, and

(b) the provision is not otherwise in conflict with *GECA*. [para. 68]

I agree. Where a direct conflict between the provincial law and the *GECA* exists, the *GECA* will prevail, rendering that aspect of the provincial law or policy inapplicable to federal workers.⁴ Otherwise, the provincial workers' compensation scheme prevails. In either case, provincial boards and authorities will be responsible for adjudicating the claim.

³ In a similar case, *McLellan v. Workers' Compensation Appeals Tribunal*, 2003 NSCA 106, 218 N.S.R. (2d) 176, a provincial presumption of causation benefitting miners seeking compensation was held to also apply to federal workers. Both provisions were "reasonably incidental" to the issue of compensation under the law of the province, and were not otherwise in conflict with the *GECA* (para. 30).

⁴ For example, in the case of the pulmonary tuberculosis amendment, which was followed by a regulation implementing the change (*The Government Employees Compensation Regulations 1948 (Pulmonary Tuberculosis)*, SOR/48-573), a provincial WCB could not deny compensation to federal employees for injury due to pulmonary tuberculosis even if the provincial legislation explicitly excluded such coverage, as this would be in conflict with the *GECA*.

[40] Given the broad delegation of the determination of eligibility to the provincial level, conflicts between provincial law and the *GECA* with respect to eligibility will generally only arise in situations where the *GECA* regime has specifically included or excluded matters from compensation in a way that is in conflict with the relevant provincial law, as for example occurred in the case of pulmonary tuberculosis.

E. *The Interpretation of “Accident”*: *Did the Provincial Policy Conflict with the GECA?*

[41] Given my conclusion that provincial law applies, except to the extent it is in conflict with the *GECA*, the second issue is whether the provincial Policy conflicted with the definition of “accident” in s. 2 of the *GECA*. Specifically, was it reasonable for the Commission to apply the Alberta Policy criteria to determine whether the chronic onset stress was caused by an accident arising out of and in the course of employment? Or did the Policy necessarily conflict with the *GECA*?

(1) Submissions of the Parties

[42] The appellant submits that the *GECA*’s definition of “accident” is broad and inclusive and cannot be limited by provincial law or policy. To interpret “accident” as requiring excessive or unusual workplace events is inconsistent with the broad definition of “accident” under the *GECA*. The Policy unreasonably and

unfairly imposes a stricter causative requirement on those suffering from psychological injuries than on those suffering from physical injuries.

[43] The respondent the WCB argues that the provincial Policy does not change or add extra requirements to the definition of “accident” in the *GECA*. Instead, it provides guidance in determining whether an accident, as defined in both the Alberta *WCA* and the *GECA*, has occurred and, if so, whether it arose out of and in the course of employment.

[44] The respondent the Attorney General of Canada contends that Parliament left considerable room for provincial law to determine the specific circumstances under which an injury is compensable and the factors to be considered in this decision.

(2) Analysis

(a) *The Relationship Between the GECA and the WCA*

[45] The *GECA* provided no definition for the term “accident” until 1947, even though the requirement that the employee’s injury be caused by an “accident arising out of and in the course of his employment” had been present in the legislation since 1931 (S.C. 1931, c. 9, s. 2).

[46] The definition of “accident” in the Alberta legislation is substantially the same as the definition in the *GECA*. Both include accidents arising out of and in the course of employment (see s. 4(1) of the *GECA* and the definition of “accident” in s. 1(1) of the *WCA*). Both include “a wilful and intentional act” of someone other than the claimant and a “fortuitous” or “chance” “event occasioned by a physical or natural cause” (see the definitions of “accident” in s. 2 of the *GECA* and s. 1(1) of the *WCA*).

[47] The Alberta legislation, like all provincial workers’ compensation legislation, contemplates the consistent adjudication of claims through the application of policies.⁵ Section 13.2(6)(b) of the Alberta *WCA* states that the Appeals Commission “is bound by the board of directors’ policy relating to the matter under appeal”. In effect, the Alberta policies govern the interpretation and application of the *WCA*.

(b) *The Specific Policy in Issue*

[48] The WCB has adopted specific policies to guide decision making on the acceptance of certain medical conditions. The Policy identifies the circumstances

⁵ B.C. *Workers Compensation Act*, R.S.B.C. 1996, c. 492, s. 99(2); Alberta *WCA*, ss. 8(3)(c) and (d) and 13.2(6); Saskatchewan *Workers’ Compensation Act, 2013*, S.S. 2013, c. W-17.11, s. 23(2); Manitoba *Workers Compensation Act*, C.C.S.M. c. W200, s. 51.1(1)(a); Ontario *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, s. 126 and 161; Quebec *An Act respecting industrial accidents and occupational diseases*, CQLR, c. A-3.001, ss. 382 and 454; New Brunswick *Workplace Health, Safety and Compensation Commission Act*, S.N.B. 1994, c. W-14, s. 7(f); Nova Scotia *Workers’ Compensation Act*, S.N.S. 1994-95, c. 10, s. 183; P.E.I. *Workers Compensation Act*, R.S.P.E.I. 1988, c. W-7.1, s. 30(1); Newfoundland and Labrador *Workplace Health, Safety and Compensation Act*, R.S.N.L. 1990, c. W-11, s. 5(1)(a); Northwest Territories *Workers’ Compensation Act*, S.N.W.T. 2007, c. 21, s. 91(3); Yukon *Workers’ Compensation Act*, S.Y. 2008, c. 12, ss. 3 “policy” and 18; Nunavut *Workers’ Compensation Act*, S.Nu. 2007, c. 15, s. 31(2).

under which a psychiatric or psychological disability is compensable. No one has suggested that the Alberta Policy is *ultra vires* the WCA. The Policy defines the parameters of an “accident” as related to claims for chronic onset stress by identifying four criteria which must be met in order to establish eligibility for compensation:

11. When does WCB accept claims for chronic onset stress?

As with any other claim, WCB investigates the causation to determine whether the claim is acceptable. Claims for this type of injury are eligible for compensation only when *all* of the following criteria are met:

- there is a confirmed psychological or psychiatric diagnosis
...
- the work-related events or stressors are the predominant cause of the injury; ...
- the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation, and
- there is objective confirmation of the events.

In addition to the duties reasonably expected by the nature of the worker’s occupation, normal pressures and tensions include, for example, interpersonal relations and conflicts, health and safety concerns, union issues, and routine labour relations actions taken by the employer, including workload and deadlines, work evaluation, performance management (discipline), transfers, changes in job duties, lay-offs, demotions, terminations, and reorganizations, to which all workers may be subject from time to time. [pp. 5-6]

...

[49] In my view, to interpret “accident” to require excessive or unusual workplace events is not inconsistent with the broad definition of “accident” in s. 2 of

the *GECA*, which “includes a wilful and an intentional act, not being the act of the employee, and a fortuitous event occasioned by a physical or natural cause”. The definition of “accident” sets out a minimum content, but is neither exhaustive nor limiting. It is permissive and flexible, consistent with Parliament’s intention to delegate the administration of workers’ compensation to the provincial agencies. As the intervener the Workers’ Compensation Board of British Columbia pointed out, neither the *GECA* nor the *WCA* definition of “accident” provides guidance as to when an accident or injury is, in fact, *caused by* the worker’s employment. Provincial law supplements the federal Act with structure and specificity.

[50] In this case, the province required excessive or unusual events for psychological stress claims and objective confirmation of those events. The requirements simply reflect Alberta’s interpretation of “accident” in the context of psychological stress claims. Under a no-fault compensation scheme, what constitutes an “accident” cannot be solely dependent on the worker’s subjective view of events. An event triggering a physical injury will often be easier to identify than one giving rise to a mental injury. Alberta’s enactment of a policy which defines a workplace “accident” causing mental injury is not unreasonable.

[51] Workers’ compensation schemes in Canada follow the Meredith model, a “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 (*Marine Services International Ltd. v. Ryan Estate*, 2013 SCC 44, at para. 29,

citing *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, at para. 25). Employers are forced to contribute to the scheme, but are freed from potentially crippling liability. These schemes provide guaranteed compensation for injuries arising from industrial diseases or accidents (*Marine Services*, at para. 30).

[52] As was pointed out in *Canada Post*, the disparity in entitlements between federal workers in different provinces which arises from the scheme of the *GECA* is not “inconsistent with the principles of federalism” (p. 105). The plan carried out through the *GECA* is cooperative federalism at work. Provincial policies may define eligibility for compensation differently, but Parliament intended this flexibility. The *GECA*'s open-ended definition of “accident” enables this flexibility; it does not curtail it.

[53] Finally, the appellant relied on the values in the *Canadian Charter of Rights and Freedoms* to argue that the definition of “accident” must be interpreted in a way that does not impose additional causality burdens on claimants for mental health injuries as compared to claimants for physical injuries. However, the constitutionality of the provisions was not challenged before this Court. For this Court to make a determination based on *Charter* values would in effect be to decide a *Charter* challenge to the Policy without a proper record.

[54] For these reasons, the Commission was entitled to conclude that there is no conflict between the definition of “accident” under the *GECA* and the Policy's

requirement that chronic stress arise as a result of “excessive or unusual” events where “there is objective confirmation”.

F. *Was the Denial of the Claim in this Case Reasonable?*

[55] The third and final issue on appeal, then, is whether the Commission’s application of the Policy to the appellant’s claim was reasonable. There is no dispute that the appellant met the first two Policy criteria: there was a confirmed psychological or psychiatric diagnosis, and the work-related events or stressors were the predominant cause of the injury.

[56] The parties’ dispute is with respect to the last two criteria of the Policy, at p. 5:

- the work-related events are excessive or unusual in comparison to the normal pressures and tensions experienced by the average worker in a similar occupation, and
- there is objective confirmation of the events.

[57] With respect to the third criterion, that the events must be excessive or unusual, the appellant argues that the Commission wrongly found the letter to be the “predominant cause” of the appellant’s condition (A.F., at para. 85, quoting the Commission’s decision, at para. 28). By not taking into account the culmination of a series of events, the Commission failed to fully account for his situation.

[58] However, the Commission explicitly acknowledged in its analysis “that the stressful factors arising from the work situation included, for example, health and safety concerns, interpersonal relations and conflicts in the workplace, compliance deadlines, performance management and the employer’s direction that the worker comply with a request for disclosure under the *Access to Information Act*” (para. 29). The Commission noted that such factors fall under the Policy’s description of normal pressures and tensions and therefore do not qualify as excessive or unusual.

[59] Given the record, and the way in which the claim was presented, it was open to the Commission to find that the “predominant cause” of Martin’s psychological injury was his reaction to a letter from his employer requesting compliance with an access to information request, and that such a request was not unusual in terms of normal pressures and tensions in a similar occupation (paras. 28 and 30).

[60] I do not agree with the appellant that the Commission unreasonably interpreted the list of “normal pressures and tensions” in the Alberta Policy as completely excluding compensation for injuries arising from labour relations issues, or health and safety concerns and interpersonal relations and conflicts. A fair reading of the reasons makes clear that the Commission found that, on the facts of this case, the events were not excessive or unusual.

[61] The Commission’s conclusion respecting the third criterion was “within a range of possible, acceptable outcomes which are defensible in respect of the facts

and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 47).

[62] Since the third criterion was not met, the Commission’s decision to deny compensation in this case was reasonable. There is no need to consider the Commission’s analysis of the fourth criterion.

V. Conclusion

[63] In enacting the *GECA*, Parliament intended that provincial boards and authorities would adjudicate the workers’ compensation claims of federal government employees — including both entitlement to and rates of compensation — according to provincial law, except where a conflict arises between the provincial law and the *GECA*. The Alberta Policy’s interpretation of “accident” in the context of psychological stress claims does not conflict with the *GECA* and was applicable to the appellant’s claim. The Commission’s decision to deny compensation in this case was reasonable. The appeal is dismissed.

Appeal dismissed.

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