

# When Laws Collide



## SITUATION

Charlotte Tan qualifies for income replacement benefits under workers' comp after injuring her back at work. She also receives EI benefits. But the EI Commission later discovers that Charlotte wasn't entitled to those EI benefits. So it orders the provincial worker's comp commission to redirect her income replacement benefits to the Commission to recover her wrongfully received EI benefits.

- Sec. 126(4) of the federal *Employment Insurance Act* allows the EI Commission to garnish payments of beneficiaries who receive benefits to which they're not entitled;
- The provincial workers' comp law states that an employee's income replacement benefits are exempt from seizure.

## QUESTION

**Can the EI Commission garnish Charlotte's worker's comp benefits?**

- A. Yes, because where federal and provincial law conflict, federal law always prevails
- B. No, because provinces have the final say on benefits and other property rights
- C. Yes because federal law generally prevails over conflicting provincial laws
- D. No because the federal law *allows for* garnishment but doesn't actually *require* it

## ANSWER

**C. Garnishment is okay because in this situation, federal prevails over provincial law.**

## EXPLANATION

One of the cool things about a federalist country like Canada is that provinces and the national government each get to make their own laws. But while it's great for freedom, the co-existence of federal and provincial laws can also cause practical problems—especially when those laws are in conflict. This scenario, which is based on a recent Supreme Court of Canada case [*Québec*

(*Attorney General*) v. *Canada (HRSD)*, [2011] S.C.J. No. 60, Dec. 8, 2011], that began in Québec, illustrates how these conflicts get resolved. Because HR directors sometimes get caught in the middle between conflicting laws, this issue can have significant practical importance to you—regardless of what province you’re in.

**The general rule** is that federal law prevails over conflicting provincial law. This is called the doctrine of paramountcy and it was the rule the Court invoked in finding that the EI Commissioner’s garnishment powers in the federal EI law trumped the exemption of income replacement benefits from seizure under provincial law, i.e., Sec. 144 of the *Québec Act respecting industrial accidents & occupational diseases*. But as you’ll see if you keep reading, the paramountcy rule isn’t so simple.

### WHY WRONG ANSWERS ARE WRONG

**A is wrong** because of the word “always.” For example, many a federal law specifically says that the law’s intent isn’t to supplant a provincial law. But the EI law includes no language indicating that garnishment by the EI Commission is subject to restrictions contained in provincial laws.

**B is wrong** because while the provinces *do* regulate property rights and primary daily activities, e.g., issuing driver’s licenses and terms of employment, their authority is subject to the federal government’s regulation of national activity like interstate commerce, trade and defence. Provincial laws that thwart a federal regulation must give way in the interest of promoting the national purpose. In this case, the Court found that garnishment by the EI Commission was essential to the federal EI system.

**D is wrong** but it raises a key point: The federal and provincial law *do* have to conflict for paramountcy to apply. But *allowing* garnishment was in conflict with Québec’s *prohibition* on seizing income replacement benefits, said the Court, because doing the former required violating the latter.