

**SUPREME COURT OF CANADA**

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| **Citation:** Quebec (Attorney General) *v.* Canada (Human Resources and Social Development), 2011 SCC 60, [2011] 3 S.C.R. 635 | **Date:** 20111208  **Docket:** 33511 |

**Between:**

**Attorney General of Quebec**

Appellant

and

**Department of Human Resources and Social Development Canada**

**and Commission de la santé et de la sécurité du travail**

Respondents

- and -

**Rock Bruyère and Attorney General of British Columbia**

Interveners

**Official English Translation**

**Coram:** McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 38) | Deschamps J. (McLachlin C.J. and Binnie, LeBel, Fish, Abella, Charron, Rothstein and Cromwell JJ. concurring) |

Quebec (Attorney General) *v.* Canada (Human Resources and Social Development), 2011 SCC 60, [2011] 3 S.C.R. 635

Attorney General of Quebec *Appellant*

v.

Department of Human Resources and

Social Development Canada and

Commission de la santé et de la sécurité du travail *Respondents*

and

Rock Bruyère and

Attorney General of British Columbia *Interveners*

**Indexed as: Quebec (Attorney General) *v.* Canada (Human Resources and Social Development)**

2011 SCC 60

File No.: 33511.

2011:  February 15; 2011: December 8.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for quebec

*Constitutional law — Federal paramountcy — Employment insurance — Recovery mechanism — Provincial statute providing that income replacement benefits received by injured worker exempt from seizure — Federal statute authorizing Employment Insurance Commission to issue requirement to pay in order to recover overpayments — Whether provincial provision constitutionally inoperative in relation to garnishment provided for in federal statute — Employment Insurance Act, S.C. 1996, c. 23, s. 126(4) — Act respecting industrial accidents and occupational diseases, R.S.Q., c. A‑3.001, s. 144.*

*Crown law — Prerogatives — Immunity — Whether Employment Insurance Commission, as agent of Crown, protected by common law immunity, with result that s. 144 of Act respecting industrial accidents and occupational diseases inapplicable to federal Crown — Whether it is appropriate to consider doctrine of paramountcy before determining whether Crown immunity applies — Interpretation Act, R.S.C. 1985, c. I‑21, s. 17.*

Following an industrial accident, B received income replacement benefits from the Quebec Commission de la santé et de la sécurité du travail (“CSST”). From November 2006 to August 2007, the CSST complied with a requirement to pay that the Canada Employment Insurance Commission (“Commission”) had issued under s. 126(4) of the *Employment Insurance Act* (“*EIA*”) in order to recover employment insurance benefits B had received from the Commission but to which he was not entitled. B challenged the lawfulness of the remittance of the income replacement benefits on the ground that they were unseizable by virtue of s. 144 of the *Act respecting industrial accidents and occupational diseases* (“*AIAOD*”). The Superior Court found that the CSST had acted improperly, and ordered it to reimburse B. The Court of Appeal allowed the appeal and, finding that there was a conflict between the provincial and federal statutory provisions, declared s. 144 *AIAOD* to be inoperative in relation to requirements to pay issued under s. 126(4) *EIA*.

*Held*: The appeal should be dismissed.

The courts are not required to apply systematically the Crown immunity rule set out in s. 17 of the *Interpretation Act*. Where a case can be decided without recourse to this rule, the court should generally give preference to the other grounds raised by the parties. In the instant case, since it is possible to apply the paramountcy doctrine, that doctrine should be considered first.

Section 126(4) *EIA* is a permissive provision, and s. 144 *AIAOD* is a prohibitive provision. Compliance with one is not defiance of the other, so there is no operational conflict. There is, however, a conflict of purposes. In this regard, to determine whether a restriction imposed by a government at one level is compatible with an authorization granted by one at another level, it is necessary to consider the two provisions in their broader legislative context in order to identify the purpose being pursued by each of the legislatures. Parliament has, in enacting s. 126(4) *EIA*, chosen to give the Commission a freestanding positive right to require a third party to pay to the Receiver General any amount the third party owes a person who is liable to make a payment under the *EIA*, on account of that person’s liability. The purpose of this measure is to ensure the integrity of the employment insurance system by making it possible to recover amounts owed, including benefit overpayments, in a simple and summary fashion, without regard for the provincial rules respecting exemption from seizure. This purpose would be frustrated if the Commission were to comply with the provincial provision creating an exemption from seizure. The Attorney General of Quebec has failed to show that Parliament intended to require the Commission, in issuing a requirement to pay, to comply with the provincial provision exempting income replacement benefits from seizure. The conflict between the two provisions is not merely apparent, but is indeed real.  The provincial provision is therefore inoperative owing to a conflict of legislative purposes.

**Cases Cited**

**Considered:** *Clarke v. Clarke*, [1990] 2 S.C.R. 795; *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188; *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113; **referred to:**  *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97; *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379; *Alberta Government Telephones v. Canada (Canadian Radio‑television and Telecommunications Commission)*, [1989] 2 S.C.R. 225; *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536; *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161; *Canada (Attorney General) v. Bourassa (Trustee of)*, 2002 ABCA 205, 6 Alta. L.R. (4th) 223.

**Statutes and Regulations Cited**

*Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001, s. 144.

*Constitution Act, 1867*, s. 91(2A).

*Employment Insurance Act*, S.C. 1996, c. 23, ss. 38(2), 42(1), (2), 43, 45, 46, 65, 126(1) to (4).

*Federal Courts Rules*, SOR/98‑106, rr. 1.1, 448.

*Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), s. 225(1), (5).

*Interpretation Act*, R.S.B.C. 1996, c. 238, s. 14(1).

*Interpretation Act*, R.S.C. 1985, c. I‑21, ss. 8.1, 17.

*Interpretation Act*, R.S.P.E.I. 1988, c. I‑8, s. 14.

**Authors Cited**

Côté, Pierre‑André, in collaboration with Stéphane Beaulac and Mathieu Devinat. *The Interpretation of Legislation in Canada*, 4th ed. Toronto: Carswell, 2011.

Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. Supp., vol. 1. Scarborough, Ont.: Thomson/Carswell, 2007 (updated 2010, release 1).

Hogg, Peter W., and Patrick J. Monahan. *Liability of the Crown*, 3rd ed. Scarborough, Ont.: Carswell, 2000.

Issalys, Pierre, et Denis Lemieux. *L’action gouvernementale: Précis de droit des institutions administratives*, 3e éd. Cowansville, Qué.: Yvon Blais, 2009.

McNairn, Colin H. H. *Governmental and Intergovernmental Immunity in Australia and Canada*. Toronto: University of Toronto Press, 1977.

Saunders, Brian J., Donald J. Rennie and Graham Garton. *Federal Courts Practice 2011*. Toronto: Carswell, 2010.

APPEAL from a judgment of the Quebec Court of Appeal (Pelletier, Dalphond and Morissette JJ.A.), 2009 QCCA 2246, [2010] R.J.Q. 1, [2010] R.J.D.T. 1, [2009] J.Q. no 14313 (QL), 2009 CarswellQue 11956, setting aside a decision of Bédard J., 2008 QCCS 1465, [2008] J.Q. no 3011 (QL), 2008 CarswellQue 3026. Appeal dismissed.

*Alain Gingras* and *Benoît Boucher*, for the appellant.

*Bernard Letarte* and *Pierre Salois*, for the respondent the Department of Human Resources and Social Development Canada.

No one appearedfor the respondent Commission de la santé et de la sécurité du travail.

No one appeared for the intervener Rock Bruyère.

*Tyna Mason*, for the intervener the Attorney General of British Columbia.

English version of the judgment of the Court delivered by

1. Deschamps J. — This appeal raises the issue of the interplay between a provincial statutory provision according to which provincial income replacement benefits received by an injured worker are exempt from seizure and a federal statutory provision that authorizes the issuance by the Canada Employment Insurance Commission (“Commission”) of a requirement to pay. For the reasons that follow, it is my opinion that the two provisions are in conflict and that the doctrine of federal paramountcy applies.
2. The facts are not in dispute. Following an industrial accident, Rock Bruyère received income replacement benefits from the Commission de la santé et de la sécurité du travail (“CSST”). From November 1, 2006, to August 24, 2007, the CSST complied with a requirement to pay that the Commission had issued under s. 126(4) of the *Employment Insurance Act*, S.C. 1996, c. 23 (“*EIA*”), in order to recover employment insurance benefits Mr. Bruyère had received from the Commission but to which he was not entitled. Mr. Bruyère challenged the lawfulness of the remittance of the income replacement benefits on the ground that they were unseizable by virtue of s. 144 of the *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001 (“*AIAOD*”).

I. Judicial History

1. Bédard J. of the Superior Court ruled in Mr. Bruyère’s favour (2008 QCCS 1465 (CanLII) (*sub nom. Bruyère v. CSST*)). He found that the CSST had acted improperly. In his opinion, the determination of whether property is seizable falls within the exclusive jurisdiction of the provinces over property and civil rights. According to Bédard J., the federal paramountcy doctrine cannot apply in such a case. A federal provision will be paramount only where there is concurrent jurisdiction or an unoccupied field. He pointed out that s. 144 *AIAOD* is of public order and expressed the opinion that the CSST may not depart from it even if the federal Crown has a statutory right of seizure.
2. The Quebec Court of Appeal (Pelletier, Dalphond and Morissette JJ.A. (2009 QCCA 2246, [2010] R.J.Q. 1)) set aside the Superior Court’s judgment, holding that there is a conflict between s. 144 *AIAOD* and s. 126(4) *EIA*. In its view, the *EIA* confers on the Commission a right that is incompatible with the prohibition against seizure provided for in the *AIAOD*. The Court of Appeal also pointed out that it was open to Parliament to subject the federal enforcement measure to other federal social provisions and to provincial provisions creating exemptions from seizure, and that Parliament had done so in other contexts. Since Parliament did not intend to so limit the scope of s. 126(4) *EIA*, there is a conflict of intentions. For these reasons, the Court of Appeal declared s. 144 *AIAOD* to be inoperative in relation to requirements to pay issued under s. 126(4) *EIA*.
3. The Attorney General of Quebec, who appeared in the Court of Appeal as an intervener, is appealing to this Court.

II. Constitutional Questions

1. On June 29, 2010, the Chief Justice stated these two constitutional questions:

1. Is s. 144 of the *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001, constitutionally inapplicable to a garnishment under s. 126(4) of the *Employment Insurance Act*, S.C. 1996, c. 23?

2. Is s. 144 of the *Act respecting industrial accidents and occupational diseases*, R.S.Q., c. A‑3.001, constitutionally inoperative in relation to a garnishment under s. 126(4) of the *Employment Insurance Act*, S.C. 1996, c. 23?

III. Positions of the Parties

1. The Attorney General of Quebec does not dispute that it was open to Parliament to enact s. 126(4) *EIA* pursuant to the federal unemployment insurance power (s. 91(2A) of the *Constitution Act, 1867*). But he submits that the doctrine of interjurisdictional immunity does not apply, because s. 126(4) *EIA* does not fall within the core of the federal unemployment insurance power and because, in any event, the application of s. 144 *AIAOD* does not impair the core of the federal power. Moreover, in his view, the federal Crown’s immunity would not entitle it to effect a seizure that is not authorized by s. 144 *AIAOD*. The Attorney General of Quebec further argues that the federal and provincial provisions in issue are not incompatible, because it cannot be said that Parliament intended to exclude the application of the provincial measure.
2. The Department of Human Resources and Social Development Canada (“Department”) submits that the Commission, as an agent of the Crown, is protected by a common law immunity as a result of which s. 144 *AIAOD* is inapplicable to the federal Crown. The Department does not rely on the constitutional doctrine of interjurisdictional immunity, but instead argues that, even if the provision in question were applicable despite the Crown’s immunity, it would be inoperative by reason of the doctrine of federal paramountcy.

IV. Analysis

1. The only issues are whether the provincial provision is applicable and whether it is operative. The Attorney General of Quebec submits that the doctrine of interjurisdictional immunity does not apply in the instant case, but there is no need to address this question because the Department is not relying on that doctrine.

A. *Analytical Framework*

1. The Department’s position that the CSST must comply with the requirement to pay is supported by two arguments. The Department suggests, in accordance with the principle that the Court should not rule on constitutional arguments unless it is necessary to do so, that the issue of the common law immunity should be considered before that of paramountcy.
2. At first glance, the Department’s suggestion would appear to be based on the order in which the Court has often dealt with the issues now before it: *Phillips v. Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*,[1995] 2 S.C.R. 97, at para. 9. If a statute is invalid, there is no point in enquiring into its applicability. And if a provincial provision is not applicable, there can be no question of a conflict with a federal provision that engages the doctrine of federal paramountcy. It is therefore logical to consider first whether a contested provision is valid, then whether it is applicable and, finally, whether it is operative. Thus, it would be appropriate to begin by considering the scope of Crown immunity, since it is a common law rule and since it relates to the applicability of the provision, before turning to the doctrine of federal paramountcy, which relates to the operability of the provision. This does not amount to a rule, however. Indeed, in *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, a majority of the Court held that arguments based on the paramountcy doctrine should be considered first, except where there are precedents that justify having recourse to the doctrine of interjurisdictional immunity to resolve the issue and that support a finding that the provision is inapplicable. This hierarchy was established as a matter of judicial policy (paras. 77‑78).
3. In my view, several reasons support considering the paramountcy doctrine before determining whether Crown immunity applies. First, the privilege of Crown immunity has been eroded somewhat. A more modern approach to the role of governments is reflected in numerous legislative amendments, in insolvency matters for example (see the historical discussion in *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379). Two provinces, British Columbia and Prince Edward Island, have passed legislation to reverse the common law presumption that statutes are not binding on the Crown (*Interpretation Act*, R.S.B.C. 1996, c. 238, s. 14(1); *Interpretation Act*, R.S.P.E.I. 1988, c. I‑8, s. 14).
4. Second, the exceptions to the Crown immunity rule are now so numerous that the current law in this field is considered to be exceedingly complex. It is said that most of the techniques used to ensure that statutes apply to the Crown are uncertain in scope and unpredictable in their application. The immunity is considered to be broader than is necessary for governments to function properly (P. W. Hogg and P. J. Monahan, *Liability of the Crown* (3rd ed. 2000), at pp. 327 and 329).
5. Finally, as is true of the doctrine of interjurisdictional immunity, the immunity rule has tended to benefit the federal Crown asymmetrically: *Alberta Government Telephones v. Canada (Canadian Radio‑television and Telecommunications Commission)*, [1989] 2 S.C.R. 225, at pp. 271‑75; see also C. H. H. McNairn, *Governmental and Intergovernmental Immunity in Australia and Canada* (1977), at p. 42.
6. Nearly 30 years ago, in *R. v. Eldorado Nuclear Ltd.*, [1983] 2 S.C.R. 551, Dickson J. (as he then was), aware of the difficulties inherent in the application of Crown immunity, wrote the following:

The conceptual rationale underlying the doctrine of Crown immunity is obscure. . . . Why that presumption [of Crown immunity] should be made is not clear. It seems to conflict with basic notions of equality before the law. The more active government becomes in activities that had once been considered the preserve of private persons, the less easy it is to understand why the Crown need be, or ought to be, in a position different from the subject. This Court is not, however, entitled to question the basic concept of Crown immunity, for Parliament has unequivocally adopted the premise that the Crown is *prima facie* immune. [p. 558]

(See also the reforms suggested by Hogg and Monahan in *Liability of the Crown*, at pp. 326‑30, and P. W. Hogg in *Constitutional Law of Canada* (5th ed. Supp.), vol. 1, at pp. 10‑14 to 10‑23, as well as the comments of McNairn, at pp. 21‑22, and those of P. Issalys and D. Lemieux, *L’action gouvernementale: Précis de droit des institutions administratives* (3rd ed. 2009), at pp. 1396‑97.)

1. Although the courts cannot change the Crown immunity rule given that it is set out in s. 17 of the *Interpretation Act*, R.S.C. 1985, c. I‑21, this does not mean that they are required to apply it systematically. 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. This is one such case, since it is possible to apply the paramountcy doctrine.

B. *Doctrine of Federal Paramountcy*

1. In *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536, at para. 64, the Chief Justice stated that the doctrine of federal paramountcy is applicable to two forms of conflict:

The first is operational conflict between federal and provincial laws, where one enactment says “yes” and the other says “no”, such that “compliance with one is defiance of the other”: *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 191, *per* Dickson J. In *Bank of Montreal v. Hall*, [1990] 1 S.C.R. 121, at p. 155, La Forest J. identified a second branch of paramountcy, in which dual compliance is possible, but the provincial law is incompatible with the purpose of federal legislation: see also *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113, at para. 72; [*British Columbia (Attorney General) v. Lafarge Canada Inc.*, 2007 SCC 23, [2007] 2 S.C.R. 86], at para. 84. Federal paramountcy may thus arise from either the impossibility of dual compliance or the frustration of a federal purpose: [*Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188], at para. 14.

1. In the case at bar, the Court of Appeal concluded that there is a conflict of intentions between the two provisions in issue (para. 7). But the Attorney General of Quebec challenges this conclusion on the ground that Parliament’s intention could not have been to block the application of provincial statutes that provide for exemptions from seizure. He emphasizes that such statutes are generally designed to protect a minimum level of resources. In his opinion, because Parliament has not clearly expressed an intention to exclude the application of provincial law, that law — s. 144 *AIAOD* in this case — applies by virtue of s. 8.1 of the *Interpretation Act*.
2. Before I consider the Attorney General of Quebec’s argument in greater detail, it will be helpful to reproduce the two provisions in issue:

*An Act respecting industrial accidents and occupational diseases*

**144.** Indemnities paid under this Act are unassignable, unseizable and nontaxable except the income replacement indemnity, up to 50% of which is seizable for alimentary debts.

At the request of the Minister of Employment and Social Solidarity, the Commission shall deduct from indemnities payable to a person under this Act the amount repayable under section 90 of the Individual and Family Assistance Act (chapter A‑13.1.1). The Commission shall remit the amount thus deducted to the Minister of Employment and Social Solidarity.

It shall also, at the request of the Régie des rentes du Québec, deduct from the income replacement indemnity payable to a person under this Act, the amounts of disability pension or retirement pension paid to that person under the Act respecting the Québec Pension Plan (chapter R‑9) which may be recovered under that Act. It shall pay the amounts so deducted to the Board.

*Employment Insurance Act*

**126.**(1)  An amount or part of an amount payable under Part I, II or VII.1 that has not been paid may be certified by the Commission

(*a*) without delay, if in the opinion of the Commission the person liable to pay the amount is attempting to avoid payment; and

(*b*) in any other case, on the expiration of 30 days after the default.

(2) On production to the Federal Court, the resulting certificate shall be registered in the Court and when registered has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate plus interest to the day of payment as provided for in this Act.

(3) All reasonable costs and charges attendant on the registration of the certificate are recoverable in like manner as if they had been certified and the certificate had been registered under this section.

(4) If the Commission has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a person liable to make a payment under Part I, II or VII.1 or under subsection (7), it may, by a notice served personally or sent by a confirmed delivery service, require the first person to pay the money otherwise payable to the second person in whole or in part to the Receiver General on account of the second person’s liability.

. . .

1. As can be seen from the provisions themselves, the federal provision is permissive, and the provincial provision is prohibitive. Compliance with one is not defiance of the other (*Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161, at p. 191). It would be possible to comply with the more restrictive provision, the provincial one, by limiting the scope of the less restrictive provision, the federal one. There is not, therefore, an operational conflict. As a result, what must be determined in the case at bar is whether there is a conflict of purposes. In some cases, it can be seen from the legislative context that a permissive or restrictive provision of a federal statute has a purpose that is compatible with the purpose of the provincial legislation, but in others, the opposite is true. To determine whether the legislative purposes of the provisions are in conflict, it must be asked whether Parliament’s purpose is compatible with that of the provincial legislature. To guide this analysis, it will be helpful to review certain of this Court’s decisions.
2. The Attorney General of Quebec urges the Court to draw an analogy with the facts of *Clarke v. Clarke*, [1990] 2 S.C.R. 795. Three other cases are also relevant to the determination of whether a permissive federal provision is compatible with a restriction imposed by a provincial provision: *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, [2005] 1 S.C.R. 188; *114957 Canada Ltée (Spraytech, Société d’arrosage) v. Hudson (Town)*, 2001 SCC 40, [2001] 2 S.C.R. 241; and *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113.
3. In *Clarke*, the Court found that the prohibition against attaching federal pension benefits that was provided for in the *Canadian Forces Superannuation Act*, R.S.C. 1970, c. C‑9, was not inconsistent with the inclusion of those benefits in the property subject to division between spouses under the *Matrimonial Property Act*, S.N.S. 1980, c. 9. The Court reached this conclusion because, in particular, the purpose of the statute that prohibited attachment was to protect not only Canadian Forces retirees but also their spouses. In addition, the protection from attachment was subject to the *Garnishment, Attachment and Pension Diversion Act*,S.C. 1980‑81‑82‑83, c. 100, which included an exception for the enforcement of an order made to ensure the payment of financial support to a spouse. The two provisions in issue were held to be consistent, because the fact that the *Canadian Forces Superannuation Act* was subject to the *Garnishment, Attachment and Pension Diversion Act* showed that Parliament’s intention was to ensure that “the financial needs of a recipient’s family were not adversely affected by” the exemption from attachment (p. 832). *Clarke* shows that to determine whether a restriction imposed by a government at one level is compatible with an authorization granted by one at another level, it is necessary to consider the two provisions in their broader legislative context in order to identify the purpose being pursued by each of the legislatures. A federal provision that appears to be prohibitive may, upon consideration of its legislative purpose, prove to be compatible with a permissive provincial provision.
4. In *Rothmans, Benson & Hedges*, a federal provision authorized exclusions, within certain limits, from a general prohibition on the promotion of tobacco products. A provincial provision imposed additional restrictions. The issue was whether the restrictive provincial provision was in conflict with the authorization granted by the federal legislation. The Court held that there was no inconsistency between the federal and provincial provisions, first because Parliament and the provincial legislature had the same purpose, namely to deal with the public health problem caused by tobacco use, and second because the authorization provided for in the federal statute did not create a freestanding right — or positive entitlement — to advertise (paras. 18‑20). In that context, the provincial provision that restricted the access of persons under 18 years of age to premises where tobacco products were promoted could be applied without conflicting with the right created in the federal provision. *Rothmans, Benson & Hedges* shows that it is important, in deciding whether a provincial provision frustrates Parliament’s purpose, to determine the exact scope of the right created in the federal provision.
5. *Spraytech* is another decision in which a restriction — a municipal one in that case — was held to be compatible with a permissive federal provision. In *Spraytech*, some companies had been authorized, by a federal agency empowered to do so, to manufacture, distribute or use pesticides. They had also been authorized by a provincial agency to sell and use the products in question. However, the municipality had prohibited the aesthetic use of pesticides. The companies argued that the municipal prohibition was in conflict with the authorizations they had received from the provincial and federal agencies. The Court held that all the provincial legislation did was to establish a licensing scheme. As for the federal legislation, it concerned the registration of pesticides for purposes of manufacturing and use, not the use to which they could be put; in short, it was unrelated to the activity restricted by the municipality. The authorizations granted to the companies merely exempted them from the general prohibitions applicable to citizens who were not registered or did not hold permits to distribute or use pesticides. What this meant was that the federal authorization to distribute and use pesticides, which could be asserted to counter a general prohibition on those particular activities, was not negated by the prohibition on spreading pesticides for purely aesthetic purposes.
6. In the above three cases, the purposes of the various governments were held to be compatible, but the Court reached the opposite conclusion in *Mangat*. That case concerned a federal statute that authorized aliens to be represented in immigration proceedings before certain administrative tribunals by persons who were not generally licensed to practise law. That authorization conflicted with the province’s prohibition against practising law without a licence. Although it would technically have been possible for an alien to retain a lawyer and thus comply with both provisions, the provincial prohibition was in conflict with the positive right under the federal statute to be represented by a person who was not a lawyer. It had thus been shown that the federal legislative purpose of facilitating access to the immigration process for aliens was frustrated by the prohibitive provincial provision. That provision therefore had to yield to the federal provisions as a result of the doctrine of federal paramountcy.
7. It is clear from these four cases that, to determine whether a conflict of purposes really exists, it is necessary to consider each of the provisions in issue in its context and to review its legislative purpose in order to clarify its scope.
8. To identify Parliament’s purpose in enacting s. 126(4) *EIA*, the Attorney General of Quebec suggests that this provision must be considered from the perspective that federal legislation generally favours the application of provincial legislation. Relying on s. 8.1 of the *Interpretation Act*, he argues that Parliament has consented to the application of the provincial rules respecting exemption from seizure, since it has not expressed an intention to exclude the application of provincial law for the purposes of s. 126(4) *EIA*. According to this argument, Parliament’s purpose in authorizing the Commission to issue a requirement to pay cannot be to deprive claimants of the protection existing under the provincial provisions. The argument based on s. 8.1 of the *Interpretation Act* cannot succeed. Section 8.1 states that if in interpreting a federal provision it is necessary to refer to private law concepts, reference must be made to the law of the province in which the provision is to be applied: see P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at p. 373. Here, the federal statute provides for a recovery mechanism, the requirement to pay. That mechanism does not require the application of private law concepts that make it necessary to refer to provincial law.
9. The legislative context of the federal provision is nevertheless relevant. In the instant case, there is no exception in the *EIA* to the effect that Parliament intended to limit the requirement to pay mechanism to what is authorized by provincial legislation. And it is apparent from the purpose and scope of the federal measure that Parliament did not consent to the restriction imposed by the provincial provision.
10. It is not enough to find that the purpose of the provincial provision is to protect a source of basic income and that this purpose is compatible with the purpose of employment insurance benefits. Parliament’s purpose in making effective recovery mechanisms available to the Commission is to protect the integrity of the employment insurance system: *Canada (Attorney General) v. Bourassa (Trustee of)*, 2002 ABCA 205, 6 Alta. L.R. (4th) 223, at para. 32.
11. There are several situations in which amounts must be repaid or paid under the *EIA* (see, for example, ss. 38(2), 43, 45, 46 and 65), and various measures are available for recovering such amounts. Thus, under s. 126(1) *EIA*, the Commission may certify that an amount is due and ask the Federal Court to register this certificate. A certificate produced to and registered in the Federal Court has the same force as a judgment of that court (s. 126(2) *EIA*). The procedure for enforcing Federal Court judgments is set out in the *Federal Courts Rules*, SOR/98‑106. Rule 1.1 states that the Rules apply to proceedings in the Federal Court. Rule 448 provides that an officer of the court who is responsible for executing a writ must apply provincial law (see B. J. Saunders, D. J. Rennie and G. Garton, *Federal Courts Practice 2011* (2010), at p. 345). This means that the Commission must follow the applicable provincial procedure if it wishes to enforce the certificate, and is therefore subject to the rules respecting exemption from seizure. This is a case in which federal law explicitly provides for the co‑ordination of federal and provincial provisions.
12. There are other provisions under which federal law is expressly subject to provisions that establish exemptions from seizure. For example, s. 225(1) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), establishes a summary procedure for seizing the goods and chattels of a person who has failed to pay an amount as required by that Act. Despite the fact that a special procedure is expressly provided for in the *Income Tax Act*, s. 225(5) states that provincial exemptions from seizure are applicable.
13. The differences between the procedures provided for in s. 126(1) and s. 126(4) *EIA* become apparent when the two procedures are compared. The procedure under s. 126(4) is autonomous, since it can be applied without reference to other federal rules or to provincial law. It requires nothing more than the issuance of a notice by the Commission, and that notice is sufficient to effect what amounts to garnishment. If Parliament has created two separate procedures, one of which is subject to provincial law while the other is not, it must be understood to have intended the second procedure to be independent of provincial law. The Commission has been granted a freestanding positive right to proceed by way of a requirement to pay rather than by way of seizure.
14. That Parliament intended the requirement to pay mechanism to be independent of the provincial rules respecting exemption from seizure is also confirmed by s. 42(1) *EIA*, which provides that employment insurance benefits are not to be assigned, charged, attached, anticipated or given as security. The protection of employment insurance benefits from seizure undoubtedly reflects a reality similar to the situation that must have prevailed at the time the provincial legislature enacted the provision exempting income replacement benefits from seizure. Nevertheless, the explicit protection afforded with respect to employment insurance benefits must yield to the Commission’s right to recover an amount that is owed under the *EIA* (s. 42(2)). This shows that Parliament intended the government’s interest in such a debt to override the need to protect individuals. It would be surprising if, even though Parliament has made an exception to the prohibition on attaching employment insurance benefits in order to authorize the recovery of amounts payable under the *EIA*, its intention was to comply with the provincial provision exempting income replacement benefits from seizure.
15. Moreover, I note that, in s. 144 *AIAOD*, the provincial legislature has itself made exceptions to the rule that income replacement benefits are unseizable. In the cases of last resort financial assistance and certain pension benefits, amounts owed may be recovered through a requirement to pay by means of a process similar to the one provided for in s. 126(4) *EIA*.

V. Conclusion

1. The choice to give precedence to the integrity of the employment insurance system is a policy decision that falls within Parliament’s authority and to which the Court must defer. The system’s stability depends not only on sound management of the collection of premiums, but also on responsible management of the recovery of benefit overpayments. It must be remembered that the responsibility for financing the employment insurance system’s social safety net is borne by all Canadian workers and employers.
2. I must therefore find that Parliament has, in enacting s. 126(4) *EIA*, chosen to give the Commission a freestanding positive right to require a third party to pay to the Receiver General any amount the third party owes a person who is liable to make a payment under the *EIA*, on account of that person’s liability. The purpose of this measure is to ensure the integrity of the employment insurance system by making it possible to recover amounts owed under the *EIA*, including benefit overpayments, in a simple and summary fashion, without regard for the provincial rules respecting exemption from seizure. This purpose would be frustrated if the Commission were to comply with the provincial provision creating an exemption from seizure.
3. The Attorney General of Quebec has failed to show that Parliament intended to require the Commission, in issuing a requirement to pay, to comply with the provincial provision exempting income replacement benefits from seizure. The conflict between the two provisions is not merely apparent, but is indeed real.  The provincial provision is therefore inoperative owing to a conflict of purposes.
4. For all these reasons, I would dismiss the appeal.  No requests for costs have been made.

*Appeal dismissed.*

Solicitor for the appellant:  Department of Justice, Québec.

Solicitor for the respondent the Department of Human Resources and Social Development Canada:  Department of Justice Canada, Ottawa.

Solicitor for the intervener the Attorney General of British Columbia:  Ministry of the Attorney General, Victoria.