

Federal Court



Cour fédérale

Date: 20230922

Docket: T-1041-19

Citation: 2023 FC 1275

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 22, 2023

PRESENT: Associate Chief Justice Gagné

BETWEEN:

**TRANSPORT CAR-FRÉ LTÉE and
GESTION TRANSPORT CAR-FRÉ LTÉE**

Plaintiffs

and

**HIS MAJESTY THE KING and THE
ATTORNEY GENERAL OF CANADA,
REPRESENTING THE MINISTER OF
EMPLOYMENT AND SOCIAL
DEVELOPMENT CANADA**

Defendants

JUDGMENT AND REASONS

I. Overview

[1] The plaintiffs are interprovincial automobile transportation companies with places of business in Quebec and Alberta. They are suing the federal Crown, invoking the common law

tort of negligent investigation, for having instituted proceedings against them based on the penal provisions relating to workers' compensation set out in the *Canada Labour Code*, RSC 1985, c L-2, following the death of an employee. The plaintiffs are not arguing that the charges were wrongly laid—in the sense that the offences were not committed—but rather that they were committed in the absence of federal jurisdiction; they are arguing that it was Alberta's provincial workers' compensation legislation that applied. They are claiming reimbursement for the costs incurred in defending themselves against the charges brought against them before the Alberta Court of Justice, until the Court concluded that the charges were *ultra vires* the federal government's jurisdiction.

[2] It is no longer disputed at this stage that Alberta law applies and that the action is not time-barred.

II. Facts

[3] Transport Car-Fré Ltée [Transport] carries on transportation activities and owns all of the assets required to that end, while Gestion Transport Car-Fré Ltée [Gestion] [collectively Car-Fré or the Plaintiffs] is a management company responsible for administering the company's affairs, including the payroll service for its employees. Réal Blanchette holds the entire share capital of both companies, and since they operate as a single corporate entity, they are treated as such by the parties.

[4] Car-Fré is headquartered in Alma, Quebec, with offices in Saint-Eustache, Quebec, Calgary, Alberta, and Edmonton. Alberta.

[5] Carl Blanchette, Réal's son, moved to Edmonton in March 2011, when the location opened, and has been responsible for its operations ever since. His two brothers are responsible for the St. Eustache and Calgary locations respectively.

[6] To enable Carl to relocate to Edmonton with his family, Car-Fré purchased a residence on more than twenty acres of land along Highway 14 in Sherwood Park, a suburb of Edmonton. It is important to note that this property is located in an agricultural zone.

[7] Car-Fré has its place of business in a truck stop located at 26 Strathmoor Drive, also in Sherwood Park. Its lease covers only one office space.

[8] On May 25, 2012, Car-Fré submitted a permit application with Alberta's Ministry of Transportation entitled "*Roadside Development Application for Development Near a Primary Highway*" for the construction of a Honco garage on part of the large vacant lot adjacent to Carl's residence. The application was clear that the land was currently being used for agricultural purposes and was intended to be used for parking, a shop and washing bays (*Parking longe [sic], Shop, Washing Bay*).

[9] The project is described as follows [*sic* throughout]:

DESCRIPTION OF THE PROPOSED DEVELOPMENT

IS TO PROVIDE THE OWNERS TO USE THE PROPOSE BUILDING FOR A PARKING FACILITIES FOR A 46' MOTOR HOME, A 42' CAMPING TRAILER AND A 20' BOAT.

THE BUILDING WILL HAVE 3 DOORS ON EACH SIDE IT WILL BE USE FOR THE PARKING FACILITIES FOR THE RECREATION MACHINES.

THE MIDDLE DOOR WILL BE A WASHING BAY PLUS A SHOP FOR PERSONAL USE.

THE OWNERS OF THE PROPERTY IS REAL BLANCHETTE AND THE LIVING FAMILY ON THE PROPERTY THE SON CARL BLANCHETTE.

THE TITLE OF THE PROPERTY IS UNDER CAR FREE TRANSPORT.

IN FRONT OF THE BUILDING THERE WILL BE A GRAVEL ENTRANCE OF 50' BY 50'.

THE PARCEL OF THE LAND CHOSEN TO BUILD WOULD AVOID TAKING DOWN TREES AND THIS TO LEAVE THE NATURAL NATURE OF THE PROPERTY.

[10] A plan and an aerial photo of the site are attached, along with plans and specifications for the proposed building. It is a Honco-type commercial steel garage, measuring 6,300 square feet (70' x 90'), with a 21.7-foot ceiling.

[11] On May 30, 2012, Alberta's Ministry of Transportation issued the permit sought on the strict condition that the garage solely be used for personal purposes and was clear that no commercial use would be permitted. The accompanying letter even makes it clear in its subject line that the garage is to be used to park a 46' motorhome, a 42' camping trailer and a 20' boat. Finally, the permit states that it is subject to approval by Strathcona County.

[12] A building permit was issued by the county on October 10, 2012.

[13] Construction began in January 2013. Car-fré acted as prime contractor, hiring a local contractor for the foundation and another to erect the building structure. It then hired various individuals for the remaining work (construction of the concrete slab, plumbing, electricity, etc.).

[14] In early May 2013, Car-fré hired Patrice and Pierre Dessureault, whom it agreed to pay \$25 and \$20 per hour respectively for electrical work on the building. As they lived in the Alma region, Car-fré paid their travel and accommodation expenses. It is not disputed that they were paid as employees of Car-Fré, which made the necessary deductions at source.

[15] The electrical work lasted about ten days. After one or two days, a mobile lifting platform (skyjack) was provided to them for working at heights. Given that the concrete slab was still not in place and the soil was clay, the platform was unstable.

[16] On May 16, 2013, Patrice and Pierre were installing the electrical wiring in the attic of the garage, which was at a height of 21.7 feet. Given that the mobile platform was not high enough, they used a stepladder placed on the platform to reach the attic. Pierre climbed onto the stepladder with a 50-pound spool of cable in hand.

[17] It was then that Pierre had a fatal fall.

[18] The accident was immediately reported under Alberta's *Occupational Health and Safety Act*, RSA 2000, c O-2 [OHSA], and three investigators were dispatched to the scene. Carl Blanchette and Patrice Dessureault were interviewed later that day, and in the evening, one of the

investigators contacted the Labour Program of Employment and Social Development Canada [Employment Canada].

[19] On May 17, 2013, Dawn Macphee, a health and safety investigator with Employment Canada, was able to visit the site and engage in discussions with the provincial investigators. They all agreed that, given that the victim was an employee of a company under federal jurisdiction and that the work was being conducted by that same company, the investigation fell under the jurisdiction of Employment Canada.

[20] Between May 17 and October 3, 2013, Employment Canada took the following measures:

- Site closure and accident investigation;
- Various directives in terms of health and safety;
- Development of an action plan;
- Training on federal occupational health and safety standards;
- Site reopening (June 17, 2013);
- Follow-up on action plan.

[21] In January 2014, Employment Canada recommended the filing of charges, and on May 9, 2014, four counts under the *Canada Labour Code* were filed against Car-Fré in the Alberta Court of Justice.

[22] Car-Fré filed an initial motion for a stay of proceedings for the breach of its language rights, as the proceedings had been conducted only in English. The Court dismissed that motion in December 2015.

[23] In August 2016, Car-Fré filed a second motion for a stay of proceedings for lack of federal jurisdiction. Judge A.J. Brown allowed the motion on June 28, 2017, (*R v Transport Car-Fre*, 2017 ABPC 157 [Brown judgment]). Judge Brown agreed that the federal government may have jurisdiction over occupational health and safety “. . . when the employment relates to a work, undertaking, or business within the legislative authority of Parliament; or when it is an integral part of a federally regulated undertaking . . .” (citing *Tessier Ltée v Quebec (CSST)*, 2012 SCC 23, at para 17).

[24] According to Judge Brown’s reasons for judgment, Carl Blanchette and a certain Allan McNab testified for the defence and emphasized that the garage was used solely for Carl’s personal purposes, with rare exceptions, and that maintenance of the trucks was carried out elsewhere. Dawn MacPhee and one Sylvia Rude testified for the prosecution, arguing that after the accident, Carl Blanchette had complied with Employment Canada’s directives, thereby acknowledging its jurisdiction. The *ratio decidendi* of the Brown judgment can be found in its paragraphs 18 to 20:

[TRANSLATION]

18. The case law points to a recurrent theme of respect with regard to the separate jurisdictions of both levels of government:

- Despite the fact that stevedoring is a federally-regulated activity, provincial occupational health and safety statutes apply. (*Tessier*)

- Provincial occupational health and safety legislation applies to construction companies, even during a construction project at an airport. (*R. v. EllisDon Corporation Ltd. et al* 2008 ONCA 789)
- Banks, regulated by the federal government, are required to comply with provincial law in matters of selling insurance. (*Canadian Western Bank v. Alberta* [2007] 2 SCR 3)
- Aeronautics is a federal jurisdiction, but a company involved in the construction of an airport is required to comply with provincial laws governing workplace conditions. (*Construction Montcalm Inc. c. Québec* [1979] 1 S.C.R. 754)
- Working conditions of employees of a Canadian Pacific hotel are regulated by provincial legislation, despite the fact that the railway company falls under the federal government's jurisdiction. (*Canadian Pacific Railway Co. v. British Columbia* [1949] J.C.J. No. 1)
- The mere fact that a company is an interprovincial transportation company and is thus regulated by the federal government does not mean that all of the company's operations fall under federal jurisdiction. (*Actton Transport Ltd. v. British Columbia (Employment Standards)* 2010 BCCA 272)

19. The Crown argues that the decisions cited must be distinguished from the present case because they involve independent companies that are not federally regulated. In addition, indeed, the Crown relies on the argument dismissed by the Court of Appeal in *Actton Transport*, the “all or nothing” approach that tells us that everything a federal company does is federal, period. (*Actton*, para 34)

20. If I were to allow the prosecution's interpretation, I would recognize an “island” of federal jurisdiction over Mr. Blanchette's property. Imagine that Mr. Blanchette's neighbours found themselves in the same circumstances as he did, except that their companies were under provincial jurisdiction, the outcome would

be illogical and not respectful of provincial jurisdiction in the area of occupational health and safety.

[25] Car-Fré thus argues before the Court that the Crown is liable under section 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, and that the defendants committed the tort of negligent investigation in that:

[TRANSLATION]

- They had a duty to diligently investigate with regard to the plaintiffs;
- The *Brown* judgment confirms that the accident fell under provincial jurisdiction; a diligent investigation by Employment Canada would have led to the same conclusion.

[26] Car-Fré further argues that Employment Canada's negligent investigation forced it to incur counsel costs in defending itself against the charges brought against it, for which it is claiming reimbursement.

III. Issues and the doctrine of issue estoppel

[27] The first issue before the Court is not whether the accident that caused Pierre Dessureault's death fell under provincial or federal jurisdiction, but whether, in May 2013, Employment Canada investigators committed the tort of negligent investigation by concluding that it fell under federal jurisdiction.

[28] In that sense, the plaintiffs' argument based on issue estoppel must be dismissed. Indeed, for this doctrine to apply, three conditions must be met:

(1) the issue must be the same as the one decided in the prior decision;

(2) the prior judicial decision must have been final; and

(3) the parties to both proceedings must be the same, or their privies.

(Toronto (City) v C.U.P.E., Local 79, 2003 SCC 63, at para 23)

[29] Since the issue to be decided is not the same, the doctrine is not applicable.

[30] Not only does Car-Fré argue that the Court is bound by *Brown*, but it adds that [TRANSLATION] “the defendants’ investigation [should have focused] on the grounds analyzed in this case” (Plaintiffs’ Argument Plan, at p 12).

[31] With respect, this position is untenable. The evidence available to the Employment Canada investigators in May 2013—and indeed to the provincial investigators dispatched to the site—is not the same as that available in 2017 and administered by the Alberta Court of Justice, which is also not the evidence presented before this Court in May 2023. Patrice Dessureault, the main witness to the accident and whose testimony is, in my opinion, crucial (more on this later), was questioned by provincial and federal investigators and testified before the Court. He did not, however, testify before Judge Brown.

[32] I am therefore of the opinion that the doctrine of issue estoppel does not apply to this case and that we must go back to May 2013, or at least before the charges were laid in May 2014, to examine the wrongdoing alleged by the plaintiffs.

[33] Furthermore, if the Court finds that the Employment Canada investigators were negligent, it must ask whether the plaintiffs suffered compensable injury following the laying of charges and, if so, whether there is a causal link between the breach of the duty of care and the injury to the plaintiffs.

IV. Analysis

A. *Were the Employment Canada investigators negligent in their investigation?*

(1) Nature of allegations

[34] The tort of negligent investigation is a tort that generates liability under Canadian common law (*Hill v Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41). The issue at this stage is whether there was a duty of care on the part of Employment Canada's investigators, and whether that duty was breached (*Hill*, at para 96).

[35] There is no real dispute that such a duty of care existed in this case. In the Supreme Court's *Hill* decision, as in many others that followed, the issue was whether the investigation into the constituent elements of the alleged offence was diligent. The Court stated that the standard of care corresponds to that of a reasonable police officer placed in similar circumstances (*Hill*, at para 67), and that "[t]he standard [of care] is informed by the legal requirement of reasonable and probable grounds to believe the suspect is guilty" (*Hill*, at para 68). In order to conclude that such grounds exist, investigators must consider all the information at their disposal.

[36] In the case before us, the plaintiffs do not in any way argue that Employment Canada's investigation into the constituent elements of the charges filed was negligent (without, however, admitting that it was diligent); indeed, they have presented no evidence to this effect.

[37] Instead, they argue that it was the portion of the investigation that led to the finding of federal jurisdiction that was negligent.

[38] In this regard, the plaintiffs argue that only evidence that the construction activities involved in the accident were an integral part of Car-Fré's operations would have led to a finding of federal jurisdiction (Plaintiffs' Argument Plan, p 14). The investigators therefore had to determine the purpose for which the garage was built, and where the storage and maintenance of Car-Fré's trucks was normally carried out (Argument Plan, p 4).

[39] The plaintiffs' first criticism of the investigators was that they failed to question Réal Blanchette, Car-Fré's sole shareholder. Given the fact that Carl Blanchette was questioned and met with several times by the investigators, I fail to see what Réal Blanchette might have added to the version of the facts given by his son. It was Carl who was in charge of operations at the Edmonton location, who supervised the construction of the garage and was Car-Fré's representative on site at the time of the accident, and it was even he who would have had sole use of the garage once construction was completed (remember that this was one of the conditions attached to the issuance of the permit by Alberta's Ministry of Transportation). The plaintiffs did not, moreover, make it clear what additional information Réal Blanchette might have provided to

the investigators, and in what way such information might have enabled the provincial and federal authorities to come to a different conclusion as to the competent authority.

[40] But there is more. Réal Blanchette testified before the Court and failed to convince me that if it had been he who had provided the investigators, between May 2013 and May 2014, with the same version of the facts as the one offered to the Court, the investigation's outcome would have been different. We will come back to this.

[41] The plaintiffs further criticize the investigators for not requesting a copy of the permit application when they had the construction permit in hand.

[42] Once again, this document would, in my opinion, have added nothing to the investigation. The information it contains, which is reproduced in paragraph 9 of these reasons, was provided to the investigators by Carl Blanchette. It should be remembered that the property is located in an agricultural zone and borders a major provincial highway. If we keep to the strict condition imposed for the issuance of this permit—namely that “no commercial use will be permitted”—Car-Fré would not have obtained its permit if it had notified the authorities that it intended to use the garage to store or maintain its trucks, even occasionally, as it acknowledges it did.

[43] That said, the investigators were required to examine all the information available at the time of the investigation, including—but not limited to—Carl Blanchette's version of events.

(2) Evidence prior to the laying of charges

[44] First, on August 30, 2010, Human Resources and Skills Development Canada notified Car-Fré that, following an investigation, it had been determined that Car-Fré fell under federal jurisdiction for the purposes of labour legislation, and was therefore subject to the *Canada Labour Code* in terms of labour relations, occupational health and safety (prevention, inspection) and labour standards. At the same time, it was notified that a health and safety officer had been assigned for the application of Part II of the *Canada Labour Code*, whose provisions are aimed at preventing work-related accidents and illnesses.

[45] Since 2006, Car-Fré has been registered with the Alberta government as an “*Extra-Provincial Profit/Non-Profit Corporation*”.

[46] In addition, Carl Blanchette, Patrice Dessureault, Richard Gaudreau and Martin Turcotte were interviewed at the start of the investigation.

[47] Carl Blanchette was interviewed by three provincial investigators on the very day of the accident, namely May 16, 2013, at around 7:35 p.m. (Exhibit C-6). From the outset, he was identified as Car-Fré’s Director of Operations. He explained the company’s interprovincial transportation operations, and when asked what Car-Fré was building for its Edmonton location, he replied: “Oh, we are building for—for the shop that we are building? We are building a shop. It’s more for personal stuff and also we can do storage and also maybe fix little things that we have to do. And we hire people from Quebec to do the job”. He confirmed that Car-Fré had retained the services of an Alberta contractor to erect the building and another contractor for the foundation work. The rest of the work (concrete floor, electricity) was performed by Car-Fré

employees, to whom Car-Fré supplied tools and equipment. Carl Blanchette confirmed that Car-Fré had built a similar garage in Quebec in 2000, and that unlike the work in progress, the work in Quebec had been entrusted entirely to a general contractor. He confirmed that he had no construction experience, that he was not familiar with the safety rules specific to this type of activity, and that there was no first-aid kit on site. Finally, he added that when Patrice and Pierre Dessureault arrived, he did not ask to see their competency cards, given that he was not the one who had hired them.

[48] Patrice Dessureault was questioned by provincial investigators on the very day of the accident, namely May 16, 2013, at 7:00 p.m. (Exhibit C-7), and he gave a written statement to Employment Canada investigators on June 4, 2013 (Exhibit C-9). It was first established that he was not a certified electrician and had no competency card. Réal Blanchette had hired him upon presentation of his business card, which he had been using to advertise his renovation services at the time. He was a Car-Fré employee, not a subcontractor. When asked what the garage under construction was to be used for, he replied: “It’s to repair vehicles—trucks”. When he arrived on site, he was shown the equipment and materials to be installed, and where to install them. No safety guidelines were provided. The instructions were issued by Carl Blanchette. He had never had any training in the operation of a mobile platform, had never used one, and they did not use any fall protection. However, Pierre did have experience operating this type of equipment. At the time of the fall, Pierre was at the top of the stepladder at attic height and had only two points of contact with the stepladder, since he was holding a cable reel weighing more than 50 pounds. He lost his balance, dropped the cable reel, hit his back on the platform railing and fell backwards to the ground. In his written statement of June 4, 2013, Patrice Dessureault provided further details

of the accident and confirmed that Carl Blanchette was his supervisor on the worksite and that he had received no information or training on the operation of the mobile platform.

[49] Richard Gaudreau (cement finisher) and Martin Turcotte (semi-skilled labourer) also provided written statements to federal investigators on June 4, 2013 (Exhibits C-8 and C-12). They confirmed that May 16, 2013, was their first day on the job site, where their task was to build a concrete foundation. They described the accident in detail.

[50] The notes recorded by the three provincial investigators on May 16 and 17, 2013, were also filed as evidence (Exhibits C-16, 17 and 18), as were those recorded by Dawn MacPhee on May 16 and September 27, 2013, (Exhibit C-19) and by Clayton Lindstrom (also of Employment Canada) on May 17, 2017 (Exhibit C-20). These notes state, among other things, that (i) Carl Blanchette confirmed that the garage was to be used for personal and work purposes; (ii) that it is a large industrial shop belonging to Car-Fré; (iii) that the interviews continued at the Super 8 motel in Sherwood Park, where the employees lived and where Car-Fré's office was located; and (iii) that following discussions among the federal and provincial investigators, all agreed that the investigation fell under federal jurisdiction. Dawn MacPhee's notes indicate that, after advising Carl Blanchette of his responsibility for the site, she emphatically stated "construction not part of trucking?" (Exhibit C-19, notes of May 17, 2013, at 1:30 p.m.). Further on (June 3, 2013), the notes reveal that the garage would be available for Car-Fré's mechanical and truck inspection requirements (*warehouse space available if needed—mechanical, inspection requirements*). On a number of occasions since the first meeting on May 17, 2013, Carl Blanchette appeared to be in a hurry to resume construction work. Under the entry dated September 18, 2013, it states that the

work had been suspended again since July and that Réal Blanchette did not see how the work affected Car-Fré's trucking operations, nor why the company was required to comply with the safety directives received from Employment Canada.

[51] In addition to the documentation and information they were able to gather during their investigation, it is important to consider Dawn MacPhee's various visits to the accident site and to the office rented by Car-Fré at its place of business. The reality was that Car-Fré had built a commercial garage—the type of construction generally used for commercial purposes—on land he owned.

[52] With respect for the opposing view, I am of the opinion that the Employment Canada investigators had all the information they needed to conclude that the construction activities involved in the accident were an integral part of Car-Fré's operations, and that the garage was built primarily for the storage and maintenance of its trucks. Given that Car-Fré's employees had no doubt about this, and that only Carl Blanchette's version differed, the provincial and federal investigators were justified in concluding as they did.

[53] That said, the Court reaches the same conclusion in light of the evidence presented by both sides at the hearing.

(3) Evidence before the Court

[54] The only two witnesses heard in this application were Carl and Réal Blanchette.

[55] Carl Blanchette confirmed that he had moved his family to Sherwood Park in 2011 in order to manage the new Car-Fré location.

[56] On cross-examination, he stated that the garage had been built to store his personal belongings, namely a 45-foot trailer (42 feet on the permit application), a boat, a four-wheeler and a snowmobile. He confirmed, however, that the 46-foot motor home mentioned on the permit application belonged to his father. He added that there was a garage attached to the house, but that it was not large enough to store a car.

[57] The Court pauses to note that a certificate of location was attached to the C-3 permit application, showing a detached garage measuring 30 feet by 22 feet (9.24 m X 6.82 m), a barn measuring 34 feet by 34 feet (10.42 m X 10.66 m) and a shed measuring 12 feet by 12 feet (3.67 m X 3.68 m).

[58] On cross-examination, Carl Blanchette confirmed that Car-Fré's place of business consisted of an office space located at a truck stop at which Car-Fré had no space for maintenance and mechanical work on its trucks. Although the gas station provided mechanical services, Car-Fré preferred to do its own repairs. The advantage of this site was that it was located in very close proximity to the CN station where Car-Fré trucks received delivery of cars for its clients' dealerships. He confirmed that the garage Car-Fré had built in Sherwood Park was exactly the same model as the one it built at its place of business in Saint-Eustache, and which was used solely for commercial purposes. The garage could store up to three tractor-trailers of the type used to transport automobiles by road.

[59] Carl Blanchette acknowledged that if a truck ended up there, it could very well be repaired or have maintenance done there; after all, [TRANSLATION] “trucks always need repairs” (May 29, 2023, transcript, at p 66, line 14). He confirmed that such a garage was useful to Car-Fré’s operations, but that Car-Fré was able to operate without it.

[60] For his part, Réal Blanchette explained that it was he who had found the site where Car-Fré built its garage. When he visited the “ranch” as he called it, he noted that some of the landowners in the neighbourhood had trucks in their yards with their garages; he thought that they would have no problem setting up there (transcript of May 29, 2023, at p 134, line 17).

[61] Since he had already done business with the Honco company at his St. Eustache location and had been satisfied with Honco, he hired them again, and simply requested that the plans be drawn up in English. He hired one contractor for the foundation and another to erect the building.

[62] He confirmed that the garage was to be used for Carl’s riding lawn mowers and his 45-foot motor home when he was able to travel to Alberta. However, he did not appear to have gone there more than once in his motor home, given that [TRANSLATION] “[i]t’s very expensive. I regretted it,” he stated (transcript, May 29, 2023, at p 140, line 11).

[63] Lastly, he confirmed that, in addition to the Honco garage built in Saint-Eustache, Car-Fré was planning on building a third one in Calgary, where his third son had recently moved to take care of his new location; in other words, one Honco garage per Car-Fré location.

[64] Patrice Dessureault and Dawn MacPhee testified for the defence.

[65] Patrice Dessureault confirmed that he had worked in property renovation, but that he held no competency card. His cousin Pierre also held no competency card. He was doing renovation work when he was told that Réal Blanchette was looking for people to do electrical work at his garage in Alberta. He went to meet him at his office and confirmed that his cousin Pierre would be able to accompany him. Réal Blanchette drove them to the Québec City airport and provided them with plane tickets to fly to Edmonton. Upon their arrival, Carl Blanchette picked them up at the airport, lent them a car belonging to Car-Fré for the duration of their stay and Car-Fré paid for their accommodation.

[66] He confirmed that he was hired by Car-Fré and received wages with deductions at the source. He was to do all of the electrical work, from the installation of the electrical panel to the installation of lighting and interior and exterior outlets.

[67] Patrice Dessureault was categorical: the garage was to be used to maintain and repair Car-Fré's trucks. That's what passing truckers were telling him, asking when their garage would be ready. He also installed at least 18 electrical outlets on the garage's outer walls (6 on each of the rear and side walls) for the trucks to be plugged into.

[68] On cross-examination, Patrice Dessureault confirmed that on the business card he had given Réal Blanchette at their first meeting, it said [TRANSLATION] "craftsman in carpentry, roofing, plastering, painting and ceramics" and that he had been in the renovation business for

some thirty years. Although he had no competency card, he had taken electrician courses for four years at the beginning of his career. He had also completed health and safety training.

[69] For the electrical work, no specific plans were provided; Carl would tell them where to install the various components.

[70] Lastly, Dawn MacPhee, a senior investigator for Employment Canada, testified for the defence and explained that, by the time she retired in 2020, she had some twenty years' experience in occupational health and safety and had about one hundred investigations to her credit. She was assisted by Clayton Lindstrom and Jacques Maltais, and they had sought the assistance of Pierre Bouchard for the interviews that were held in Quebec.

[71] The issue of federal jurisdiction is always the first to be decided at the beginning of an investigation.

[72] On May 17, 2013, she received a call from her supervisor notifying her of a fatal accident that had occurred at Car-Fré the previous day. She was informed that the provincial authorities were under the impression that the case fell under federal jurisdiction, and she noted that Car-Fré's name was indeed in Employment Canada's internal database.

[73] That same day, she and her colleague met with Carl Blanchette and the provincial investigators at the site of the accident. She did not conduct any formal questioning, given that the provincial investigators had done so the previous day. She did, however, meet with Carl

Blanchette at the Sherwood Park office afterwards to ask him additional questions. As far as she could recall, her first contact with Réal Blanchette occurred in late spring. She had not seen fit to meet him earlier, given that Carl was the employer's representative on site.

[74] She explained that she requested all relevant documentation with respect to the ownership of the property, the identity of the site supervisor and the employment relationship between Car-Fré and the victim. On this last point, she paid particular attention to the testimony of the employees: who they considered their employer to be, how were they remunerated, etc.

[75] Dawn MacPhee explained how her team had proceeded with the investigation and confirmed that they quickly found several instances of non-compliance with occupational health and safety legislation, as well as the lack of any safety measures on site.

[76] Employment Canada decided to file charges against Car-Fré when it dismissed the consultant hired to assist with implementing a health and safety action plan and stopped the implementation of that plan. Exhibit C-41 contains a summary of the case, including a section on Employment Canada's jurisdiction, as well as the nature of the proposed charges. It was explained that Transport and Gestion are two highly integrated companies operating an interprovincial transportation business, an activity that clearly falls under federal jurisdiction within the meaning of paragraph 2(b) of the *Canada Labour Code*. That paragraph deals exclusively with the issue of whether Gestion, which does not operate the transportation business as such, but which is nonetheless the employer, may also be considered subject to federal jurisdiction. The issue in no way concerns the intended use of the building.

[77] With respect to the intended use of the building, Dawn MacPhee relied on the testimony gathered during her investigation, including that of Carl Blanchette, who admitted that the garage was used for minor repair work; she further relied on the type of garage and on its format. Having carried out multiple similar inspections (literally a hundred), she was able to confirm that this was the type of garage owned by most transportation companies. These facts, combined with the fact that Car-Fré owned the land and the building, were sufficient for her.

[78] She personally devoted more than 500 hours of her time to this case.

[79] On cross-examination, Dawn MacPhee confirmed that jurisdiction is not determined in concert with provincial investigators, but rather individually. On this issue, she had never been assigned to a case in which the two levels of government had reached different conclusions. She did not specifically request a copy of the permit application, but she did ask for a copy of all the documents in Car-Fré's possession with respect to the construction; she received only the permit.

B. *Plaintiffs have not met their burden of proof*

[80] In *Tessier*, the Supreme Court of Canada was clear “that the federal government has jurisdiction to regulate employment in two circumstances: when the employment relates to a work, undertaking, or business within the legislative authority of Parliament; or when it is an integral part of a federally regulated undertaking, sometimes referred to as derivative jurisdiction” (at para 17).

[81] Subsection 122(1) of the *Canada Labour Code* defines a work place as “[a]ny place where an employee is engaged in work for the employee’s employer”.

[82] The Court is of the opinion that the Employment Canada investigators asked themselves the right questions to arrive at their conclusion with respect to federal jurisdiction: what relationship existed between the victim and the employer; what the nature of the employer’s activities was; and whether the construction activities of the commercial or industrial type of garage on Car-Fré’s property were an integral part of the undertaking.

[83] The evidence clearly shows that they had sufficient information to confirm the employment relationship between Car-Fré and the victim, that Car-Fré was a federally regulated company, and that not only was the structure owned and managed by Car-Fré, but it was also intended to be used for Car-Fré’s operations. It is true that Carl Blanchette’s version differed from Patrice Dessureault’s on this point, but the type of structure in question fits more with Dessureault’s version.

[84] Moreover, the Court grants little credibility to Carl and Réal Blanchette’s testimony on the issue of the garage’s intended use. In their permit application, they state that the structure would be used strictly for personal storage of a motor home, a trailer and a boat. We learned, however, that the motor home belonged to Réal, who lives in Alma, Quebec, and not to Carl. And in fact, they failed to comply with the strict condition attached to the issuance of their permit; they admit to having used the garage for minor repairs to Car-Fré’s trucks.

[85] Furthermore, Carl Blanchette stated that the garage attached to his house was so small that a car could barely be parked in it. However, the site plan shows that this was not the case and that, in addition to the garage, this part of the property was equipped with a sizeable shed and a barn.

[86] As stated, the evidence presented before the Court confirms the conclusion of the Employment Canada investigators. Patrice Dessureault was always under the impression that the garage was to be used for Car-Fré operations, and passing truckers confirmed this fact. He was asked to install some 18 exterior outlets around the perimeter of the building for trucks to be plugged in, and the building included office space. And what can we say about the spontaneity with which Réal Blanchette confirmed that a similar garage had been built at each of Car-Fré's three places of business, in addition to confirming that the one in Saint-Eustache was used exclusively for commercial purposes? In short, in light of all the evidence, there remains little doubt in the Court's mind that the garage was intended to be used for Car-Fré's operations.

[87] Lastly, if it had been so obvious that the charges were *ultra vires* the power of the federal Crown, it would not have taken Car-Fré's Alberta counsel two years to make that argument.

[88] The Court is therefore of the opinion that it was perfectly reasonable for the Employment Canada investigators to conclude that Pierre Dessureault's fatal accident was subject to federal jurisdiction.

C. *Compensable injury and causation*

[89] Although it is not necessary, given the foregoing conclusion, to decide the issues of compensable injury and causal link, the Court is further of the opinion that there is no causal link between the alleged negligence and the alleged injury.

[90] The plaintiffs have not argued that if the federal and provincial authorities had both concluded that the accident fell within provincial jurisdiction, no charges would have been filed against them. One thing is certain: there was a fatal work accident. And without having to speculate on the issue, it seems fairly obvious that the worksite managed by Car-Fré failed to meet minimum health and safety standards, either federal or provincial. The plaintiffs had to incur counsel costs due to their own negligence and stubbornness in failing to comply with the action plan provided by Employment Canada.

[91] Regardless of the applicable statutory framework, the plaintiffs failed to comply with minimum occupational health and safety standards. Those failures on the plaintiffs' part constitute offences that entail criminal liability under both federal and Alberta occupational health and safety legislation.

[92] Indeed, the charges laid against the plaintiffs under the *Canada Labour Code* (section 124 and paragraphs 125(1)(q) and 125(1)(z.04) and the *Canada Occupational Health and Safety Regulations*, SOR/86-304 (section 19.4 and subsections 14.23(1), 19.5(1)) all have an equivalent in the *Occupational Health and Safety Code 2009 Order*, Alta Reg 87/2009 (sections 7, 9), the *Occupational Health and Safety Regulations*, Alta Reg 62/2003 (paragraph 2(1)(a), subsection 3(4)) or the OHSA (subsection 15(1)).

[93] Furthermore, with respect to the fact that Alberta provincial authorities did not file charges against the plaintiffs after the Brown ruling, this can be explained by the fact that Alberta law imposes a two-year timeline for doing so, and that this had expired on May 15, 2015 (subsection 41(4) OHSA).

[94] The Court is therefore of the opinion that the plaintiffs have not met their burden of proving any causal link between the alleged negligence and the alleged injury, or that if the federal and provincial investigators had concluded that the accident fell within provincial jurisdiction, no charges would have been laid against the plaintiffs and no fine would have been imposed for their failure to comply with minimum occupational health and safety standards.

V. Conclusion

[95] Given that the plaintiffs have not established the existence of the constituent elements of the tort of negligent investigation, their action against the defendants is dismissed.

[96] At the end of the hearing, the Court granted the parties a two-week deadline to notify it of their joint or respective position on costs, which they failed to do. The Court therefore grants them an additional two-week deadline to do so.

JUDGMENT in T-1041-19

THIS COURT’S JUDGMENT is as follows:

1. The plaintiffs’ action is dismissed.
2. The parties have two weeks to make submissions, in writing and not exceeding two pages, regarding the costs to be awarded to the defendants.

“Jocelyne Gagné”

Associate Chief Justice

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1041-19

STYLE OF CAUSE: TRANSPORT CAR-FRÉ LTÉE and
GESTION TRANSPORT CAR-FRÉ LTÉE v HIS
MAJESTY THE KING and THE ATTORNEY
GENERAL OF CANADA, REPRESENTING THE
MINISTER OF EMPLOYMENT AND SOCIAL
DEVELOPMENT CANADA

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: MAY 29, 30 AND 31, 2023

JUDGMENT AND REASONS: GAGNÉ A.C.J.

DATED: SEPTEMBER 22, 2023

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