

Must Federally Regulated Companies Obtain Provincially Required Permits?



Provincial environmental law covers federal operations unless it would impair an essential part of those operations.

In Canada, the federal government and provinces share legal authority to regulate the environment. As illustrated by recent high profile court cases brought by provinces against the federal government for allegedly encroaching on their constitutional regulatory authority, shared powers can create thorny legal issues. One notable example involves requirements to obtain permits to engage in certain activities subject to environmental regulation. Here's a scenario illustrating the interplay between federal and provincial permitting powers.

Situation

A national railway company uses heavy machinery to remove snow and load it onto trucks where it's carted away and dumped in a railway car storage yard. The law of Qu bec, where the storage yard is located, requires an environmental permit for this kind of snow removal activity. But since the railway is a national enterprise regulated by federal law, it doesn't think the Qu bec law applies and doesn't bother to obtain the permit. The government of Qu bec says the permitting law does apply and charges the railway with a permitting violation. The railway's snow removal activity has a significant impact on the environment. But it's also vital to keep the railway running.

Question

Can the railway company be found guilty of violating the Qu bec permitting law?

1. Yes, because provincial environmental law applies to any undertaking that takes place in the province, even a federally regulated one.
2. No, because provincial environmental law doesn't apply to any federal undertaking regardless of its impact on the environment.
3. Yes, because provincial environmental law applies to a federal undertaking if it affects the province's environment.
4. No, because provincial environmental law doesn't apply if it disrupts a vital part of a federal undertaking.

Answer

1. The Qu bec law does not apply because forcing the railway to obtain a permit would disrupt a vital part of its undertaking.

Explanation

The situation described in this case isn't hypothetical. It's based on an actual Qu bec case that's useful in showing how to determine which law applies when a federally regulated company like a railway conducts environmentally-sensitive operations inside a province.

Basic rule: The provincial environmental law applies to the federal operation unless it would 'impair or paralyze' a 'vital or essential part' of that undertaking. In this case, removing snow was essential to keep the railway moving in winter. Requiring the railway to get a permit would impair that activity. Consequently, the court ruled that the railway didn't have to comply with the Qu bec permitting law. So D is the right answer [*Quebec (Attorney General) v. Canadian National Railway Co.*, 2005 CanLII 13081 (QC CQ)].

Why Wrong Answers Are Wrong

A is wrong because provincial law doesn't automatically apply to any activity in the province. Sometimes federal law supersedes provincial law. When you think about it, this rule makes sense. Businesses that operate in all parts of Canada such as railroads, airlines and telecommunications companies need to be subject to uniform federal regulation. If each province could impose its own regulations, it would tie these vital national operations in knots.

B is wrong because it goes too far in the other direction. In a federalist system like Canada, the provinces must have authority to regulate activity within their own territory. Making federally regulated companies automatically immune from any provincial regulation would strip the provinces of the ability to safeguard their vital interests and throw off the federalist balance.

C is wrong because the test that decides whether a federally regulated company must comply with a provincial law is not whether the activity affects the environment but whether the activity affects the environment and whether forcing the federal company to follow the provincial requirement would interfere with a vital operation. Thus, if the snow removal operation hadn't been critical to keep the trains running, the railway company would have been required to get a permit under Qu bec law.