



ESDC # : _____

PROTECTED B WHEN COMPLETED

**ELECTION TO CLAIM UNDER THE GOVERNMENT EMPLOYEE COMPENSATION ACT
(GECA) – RIGHTS AGAINST THE THIRD PARTY**

I, _____,
(Print name)

while in the employment of the Crown, _____.
(Date of Injury)

As a Crown employee, I may be entitled to take action against the third party named below:

If you have information on the third party against whom action should be taken please advise.

The third party is a person or organization responsible for your injuries. It is also someone who is not your employer nor a federal co-worker.

As per section 9 of GECA, employees of the federal government have one of two options.

I HEREBY ELECT (Please select ONE of the following options and fill out bottom portion)

☐ **Option #1: CLAIM COMPENSATION UNDER THE GECA**

My file shall be referred to the appropriate workers compensation body for adjudication. The Crown shall be subrogated to all my rights and may maintain an action in either the name of the Crown or in my name, against the third party.

I also agree to cooperate with the Crown, including testifying in court or other legal proceedings, and to complete and submit all documents as necessary in furtherance of an action taken by the Crown.

If I elect to claim compensation under the GECA, I authorize Employment and Social Development Canada (ESDC) or its representative to obtain whatever medical and hospital reports or other information such as police reports, municipal bylaw services reports and any other source of investigation material required for the purposes of maintaining an action against the third party. In this regard, I also authorize my attending doctors, treating practitioners, health professionals, the provincial workers compensation body and any hospitals involved to release such medical or other information to ESDC as aforesaid. I further authorize the provincial workers compensation body to release a full and complete copy of my file to ESDC.

Should my collective agreement refer to Injury-on-Duty Leave, this agreement provides that Her Majesty may recover any compensation or costs awarded under the *Government Employees Compensation Act* if:

- a) The recipient's personal injuries were caused by an act or omission of a third party in the use or operation of an automobile.
- b) The third party was when the injuries occurred, insured under a motor vehicle liability policy for the automobile referred to in clause (a).
- c) The motor vehicle liability policy referred to in clause (b) applied to and covered the loss in respect of the recipient's personal injuries.

This clause applies in respect of an automobile accident occurring within or outside Canada.

This information may be shared with Department of Justice Canada and/or the third party for the purposes of maintaining an action against the third party.

My personal information is administered in accordance with the GECA and the *Privacy Act*. I have the right to the protection of and access to my personal information. It will be kept in personal information bank No. ESDC, PCE 701 and ESDC, PPU 32. Instructions for obtaining this information are outlined in Info Source, which is available at the following web site address:
<http://www.infosource.gc.ca>.

☐ **Option #2: TO TAKE ACTION DIRECTLY AGAINST THE THIRD PARTY**

ESDC will close my file and inform the appropriate workers compensation body that no benefits are payable. Any expenses, including those for lost wages or medical expenses will be my sole responsibility.

If I claim against the third party and less is awarded, either upon a settlement pre-approved by the Minister or under a judgment of a court of competent jurisdiction, than the total amount of compensation to which I may be entitled under the *Act*, the difference between the total amount awarded and the amount of such compensation may be paid to me pursuant to subsection 9.2(2) of the GECA. However, if I abandon or otherwise discontinue my action against the third party, I do not have any recourse under subsection 9.2(2) of the GECA.

(Claimant's Signature) (Date) (Province)

(Witness to Claimant's signature) (Printed name of Witness) (Relationship to Claimant)

(Guardian signature - if claimant under 18) (Printed name of Guardian) (Relationship to Claimant)

NOTICE TO CLAIMANT (OR DEPENDANTS)

In the event the injury was caused by a party outside of the federal government or its agencies, you must decide to either claim against the responsible party, or claim compensation under the *Government Employees Compensation Act* (the GECA). As required by section 11 of the GECA, this Election Form shall be returned within three months from the date of accident, or in the case it results in death, within three months after the death.

In case of a fatality, each separate dependant must complete this form.

YOU CANNOT CLAIM COMPENSATION UNDER THE GECA AND TAKE ACTION DIRECTLY AGAINST THE THIRD PARTY. YOU MUST DECIDE BETWEEN BOTH COURSES OF ACTION.

CLAIMING COMPENSATION

Should you decide to claim compensation, subsection 9.2(3) of the GECA states that all your rights to claim for damages related to personal injuries are automatically subrogated to the Crown, who then may or may not exercise those rights against the responsible third party. Subrogation means the transfer of the authority to exercise rights from one person to the other. Should the Crown decide to exercise those rights, we would then pursue the other party for all the damages you had a right to recover.

There is no guarantee that the Crown will pursue an action in your case. Nor is there any guarantee as to the results of any action pursued. In all dealings, the Crown will act in good faith and will consider your position. You can ensure your position is known by providing all information requested and/or any information that you feel is relevant to the action. However, the Crown retains full control of the assessment of damages, the negotiations with the other party, as well as the acceptance of any settlement proposals. Your approval will not be required for settlement.

If the Crown is successful in Her action, the settlement or judgment amount may exceed the cost of the claim. In such cases, subsection 9.2(4) of the GECA authorizes a payment to the employee, or dependants, of a portion of the settlement or judgment exceeding the costs of the claim. This is called an excess payment. **There is no guarantee that an excess payment will be made.** If awarded, this money is given to you on the condition that it will be deducted from any future compensation entitlements. Please note that costs of the claim include, but are not limited to, benefits awarded, costs of medical reports or other consultations, as well as legal fees incurred by ESDC in pursuing the third party.

TAKING ACTION DIRECTLY AGAINST THE THIRD PARTY

Should you decide to pursue the responsible party, subsection 9.2(2) of the GECA provides that when the total amount of a settlement or judgment is less than the total amount of compensation to which you would be entitled under the GECA, the difference between the total amount awarded and the total amount of such compensation may be paid to you only if any proposed settlement is approved by ESDC prior to acceptance. Pre-approval is not required where the award is the result of a judgment from a court of competent jurisdiction. In assessing the total amount of the settlement or judgment, the amount does not include legal fees or other costs you may have incurred in pursuing the action.

In other words, you can only benefit from subsection 9.2(2) of the GECA if your action against the third party is resolved by a preapproved settlement or a court judgment. You will not have any recourse under subsection 9.2(2) if you abandon or otherwise discontinue your action.

GENERAL INFORMATION

Please make your choice carefully. **As per Section 9.(2) of the GECA,** “The Election made by the employee or their dependents is final.” This original form must be returned with your signature and that of the witness or guardian. The Accident Questionnaire must also be filled out along with the Election to Claim form.

You may wish to seek independent legal advice prior to signing this form. Please note that you are responsible for any legal fees you incur. You will not be reimbursed by ESDC.

In the event that you have accepted money from the third party or his representative, and also signed a document releasing him of further responsibility. You will be deemed to have elected to take action directly against the third party.

You must advise ESDC of any discussions or negotiations that you may have had with the third party or his representative, even if you have not accepted money or signed a release.

For further clarification on the contents of this form, you should contact a Claims Officer of Employment and Social Development Canada.

Submit Form by Email