

NOVA SCOTIA COURT OF APPEAL

Citation: *Cape Breton Development Corporation v. Estate of James Morrison*, 2003 NSCA 103

Date: 20031002

Docket: CA 192454

Registry: Halifax

Between: Cape Breton Development Corporation (Workers' Compensation Board Claim No. 921658)

Appellant

v.

Estate of James Morrison and The Workers' Compensation Appeals Tribunal and the Workers' Compensation Board of Nova Scotia

Respondents

Judge: Freeman, J.A.

Appeal Heard: September 15, 2003, in Halifax, Nova Scotia

Subject: Workers' Compensation; **Government Employees Compensation Act** (R.S., c. G-8)(**GECA**); **Workers' Compensation Act** (Statutes of N.S, 1994-95) (**N.S.W.C.Act**); Interaction of federal and provincial legislation.

Summary: The Cape Breton Development Corporation (Devco) has appealed a decision by the Worker's Compensation Appeals Tribunal decision granting survivor benefits to the widow of James Morrison, who died at 82 while in receipt of a 70 permanent medical impairment award for lung dysfunction. Mr. Morrison qualified for that benefit under the so-called automatic assumption provision of the **Workers' Compensation Act** because he had worked more than 20 years on tjhe coal face of Devco mines. The onus was on the estate to prove

that his death was caused by his occupational illness. The Tribunal found that evidence of causation was equally balanced and applied s. 187 of the **Act**. Section 187 relieves workers or their estates of proving their claims to the civil standard of a preponderance of probabilities; it requires that they be given the benefit of the doubt when evidence is equally balanced. Devco is a federal Crown corporation and it was not in issue that **GECA** applied to the claim of the Morrison Estate. Devco's submission was that causation had to be proved to the civil standard as a matter of entitlement governed by s. 4(1) of **GECA** before the **N.S.W.C.Act** was engaged. Therefore the Morrison Estate could not rely on the the benefit of the doubt pursuant to s. 187 to prove that industrial disease was a material cause of Mr. Morrison's death. Once entitlement was proved to the civil standard however, the provincial statute applied and presumptions such as s. 187 could apply to issues related to the rate and conditions of compensation. This argument has been described as the "**GECA** gateway," requiring a higher standard of proof of entitlement for federal workers than for provincial workers.

Issue: The issue was whether the Tribunal erred in applying s. 187 to find Mr. Morrison's widow entitled to survivor benefits.

Result: The appeal was dismissed. The Nova Scotia **Workers' Compensation Act** governs claims submitted under **GECA** provided that the provision in issue is reasonably incidental to a rate or condition governing compensation under the law of the province and is not otherwise in conflict with **GECA**. The provincial **Act** applies to federal employees as defined in **GECA** who file a claim for workers' compensation, and Section 4 of **GECA** should be considered as a whole.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of xxx pages.