

NOVA SCOTIA COURT OF APPEAL

Citation: *McLellan v. Nova Scotia (Workers' Compensation Appeals Tribunal)*,
2003 NSCA 106

Date: 20031014

Docket: CA 162163

Registry: Halifax

Between:

Lorne V. McLellan

Appellant

v.

Workers' Compensation Appeals Tribunal of Nova Scotia
and Workers Compensation Board of Nova Scotia

Respondent

Judge: Freeman, J.A.

Appeal Heard: September 18, 2003

Subject: Workers compensation; **Government Employees Compensation Act**, R.S.C. 1985, c. G-8 (**GECA**); application of Workers' Compensation Act R.S.N.S. 1989 c. 508; Workers' Compensation Act 1994-95 c. 10, as amended to federal employees in Nova Scotia.

Summary: Appellant worker employed underground in the coal mines of Cape Breton Development Corporation (Devco), a federal corporation, applied for workers compensation based on loss of lung function due to occupational disease. The Workers' Compensation Board refused two separate claims based on different provisions of the Act for want of evidence of loss of lung function. In dismissing his appeals the Workers' Compensation Appeals Tribunal held the worker to the civil standard of proof, a preponderance of probabilities, and refused to give him the benefit of the doubt because he was a federal employee claiming under **GECA**. Both the old and the current Act contain

provisions entitling workers to the benefit of the doubt, relieving them of the onus of proving their claims to the civil standard. The Tribunal found that these provisions did not apply to claims under **GECA**, which required proof to the civil standard.

Issue: Was the appellant entitled to the benefit of the doubt in the evaluation of his compensation claims?

Result: The appeal was allowed and the matter was remitted to the Workers Compensation Appeals Tribunal for a review of all the relevant evidence in light of all relevant provisions of the **Workers' Compensation Act**. The court followed its very recent decision in **Cape Breton Development Corporation v. Estate of James Morrison**, 2003 NSCA 103 which found that all provisions of the Nova Scotia **Act** related to the rate and conditions of compensation which do not conflict with **GECA** apply to federal workers in the province.

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 12 pages.