

IN THE MATTER OF:

**Bill No. 151 An Act to Amend Chapter 10 of
the Acts of 1994-95, the Workers'
Compensation Act**

**SUBMISSIONS TO THE LAW AMENDMENTS COMMITTEE ON BEHALF OF
ENTERPRISE CAPE BRETON CORPORATION**

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I. Introduction

Enterprise Cape Breton Corporation (“ECBC”) is a federally-regulated employer. On January 1, 2010, ECBC assumed the assets and liabilities of Cape Breton Development Corporation (“Devco”) including liability for workers’ compensation benefits for the former Devco coal miners. ECBC is currently the only remaining employer in Nova Scotia with former employees who are coal miners.

II. Background to Automatic Assumption

Section 35 of the *Workers’ Compensation Act* provides for benefits to coal miners who meet the following conditions:

- a) The coal miner has worked at the face of a mine or in similar conditions for 20 years or more; and
- b) The coal miner suffers from a permanent impairment due to a loss of lung function.

Once these conditions are met, it is assumed that the loss of lung function is a result of working underground (thus the name Automatic Assumption) and the worker is entitled to benefits as a permanent medical impairment. There is no requirement to show causation as is the case with other workers’ compensation benefits.

The assumption is automatic and any other causes that could be contributing to a loss of lung function (i.e. smoking, obesity, age, etc.) are not considered in determining the benefits payable to the worker.

From a practical standpoint, the worker undergoes pulmonary function testing and the amount of the permanent medical impairment awarded is based on the degree of loss of lung function as determined from these tests.

The award or reduction of a permanent medical impairment under Section 35 does not prevent a worker from receiving other benefits as a result of other workplace injuries or disease, including lung diseases such as pneumoconiosis, silicosis and industrial bronchitis. Automatic Assumption is designed to compensate a worker for loss of lung function only without any consideration of what may be causing that loss of lung function. A number of former Devco employees who receive Automatic Assumption benefits also receive benefits for other injuries and disabilities.

Recently, a number of workers who have been receiving Automatic Assumption benefits have shown improvement in their lung function. In some cases, the benefits the worker receives under the Automatic Assumption provisions have decreased. This would be the normal result anytime a worker's medical condition improves, regardless of the nature of the injury or illness.

III. Bill 151

Bill 151 seeks to amend the *Act* to prevent a reduction in the worker's Automatic Assumption benefits regardless of any improvement in the worker's condition, even if the worker no longer suffers any loss of lung function at all.

IV. Why this amendment should not be made

a. The amendment is contrary to the spirit and intent of the legislation

The purpose of Workers' Compensation legislation is to provide compensation to workers who become injured or disabled during the course of their employment. It is a no fault system but is premised on the worker receiving benefits based on the degree of their impairment.

In most cases, the worker receives benefits temporarily until their condition improves and they can return to the workplace. In some cases, the worker is left with a permanent impairment which may or may not prevent them from working.

However, underlying the benefits awarded to any injured worker is that the benefits received should be proportional to the degree of disability and its impact on the employee's ability to work.

In the case of Automatic Assumption benefits, there are currently approximately 60 claims before the Workers' Compensation Board in which the worker's loss of lung function has improved. In the usual situation, an improvement in an employee's condition would result in the reduction of the worker's benefits under the *Act*.

Amending the legislation to prevent a reduction of Automatic Assumption benefits not only provides a benefit to Automatic Assumption recipients that other injured workers do not receive, but is contrary to the principle that the level of benefits received should be proportionate to the degree of disability.

In some cases, the worker's loss of lung function has decreased to the point where no benefits would be payable under the guidelines established for awarding Automatic Assumption benefits. If Bill 151 is passed, these workers would continue to receive Automatic Assumption benefits even though they no longer suffer any impairment.

b. Automatic Assumption benefits are already a unique benefit

The creation of Automatic Assumption benefits under Section 35 of the *Workers' Compensation Act* is unique to Nova Scotia. There is no similar legislation in any other jurisdiction in Canada.

Workers who qualify for benefits under Section 35 are already receiving benefits as a result of an assumption, i.e., that their loss of lung function is a result of working underground, and no consideration or apportionment of these benefits is made for other factors that may be contributing to the loss of lung function such as smoking, age, weight.

Amending Section 35 to prevent any reduction in benefits if the worker's condition improves allows for another unique award of benefits to this group of workers which is not available to other injured workers.

Further, Section 35, as it is currently drafted, only creates entitlement to the benefit. The quantification and calculation of the benefit has always been left to the Workers' Compensation Board based on Board policy. Bill 151 would fundamentally alter section 35 such that it would also address the quantification of Automatic Assumption benefits.

c. The funding of Automatic Assumption benefits comes from citizens' tax dollars

Pursuant to the *Government Employees Compensation Act*, the Government of Canada is financially responsible for the full cost of all Workers' Compensation claims of the former Cape Breton Development Corporation ("Devco") employees. There are currently more than 700 former Devco employees in receipt of Automatic Assumption benefits and presently more than 60 of these employees have shown improved lung function. That number is anticipated to increase as recipients of Automatic Assumption benefits come up for periodic review of the pulmonary lung function. In 2011, the Automatic Assumption payments made to Devco employees through Enterprise Cape Breton Corporation totalled \$3,844,625.00. Attached is a Table outlining the number of former Devco workers receiving automatic assumption payments and the total amount of those payments since 1997. From 1997 to date, more than

\$71,000,000.00 has been paid in automatic assumption benefits. Bill 151 would only increase those costs.

This amendment will require the Government of Canada to pay for benefits where there is no corresponding impairment. To provide this unique situation where workers continue to receive benefits that do not correspond to the level of impairment is fiscally irresponsible and places an increased burden on the taxpayers of Canada.

d. Discouraging potential investment in Cape Breton

At present, there is no coal mining taking place in Nova Scotia. However, it is anticipated that the Donkin Mine in Cape Breton may reopen as early as 2014.

Bill 151 increases the potential liability for any employer who is contemplating a coal mining operation in this province. This amendment would allow workers to qualify for automatic assumption benefits and receive that benefit for the remainder of their life regardless of any improvements in their condition. This type of liability would discourage investors from investing in any future coal mining operations in this province.

V. Conclusion

For the reasons discussed above, Bill 151 should not be passed. It creates a compensation scheme wherein workers will receive benefits that are not reflective of the degree of injury and which are different from the benefits available to other workers. In addition, it will increase expenditures and is not fiscally responsible.

All of which is respectfully submitted,

Yours truly,

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**Enterprise Cape Breton Corporation
Automatic Assumption Claims**

Volume	Year		Total
1,344	1997	\$	5,293,763
1,218	1998	\$	4,717,377
1,186	1999	\$	4,546,542
1,162	2000	\$	4,526,225
1,118	2001	\$	4,383,217
1,068	2002	\$	4,504,373
1,058	2003	\$	4,788,955
993	2004	\$	4,839,766
999	2005	\$	4,351,888
1,007	2006	\$	4,468,481
1,028	2007	\$	4,670,951
1,105	2008	\$	4,549,803
876	2009	\$	4,472,926
799	2010	\$	4,072,799
750	2011	\$	3,844,625
711	2012	\$	3,342,163