

NOVA SCOTIA COURT OF APPEAL

Citation: Copage v. The Annapolis Valley Band, 2004 NSCA 147

Date: 20041209
Docket: CA 224799
Registry: Halifax

Between:

The Annapolis Valley Band

Appellant

v.

Murray Copage, Sr., Janette Peterson,
Lawrence Toney and Marilyn Toney

Respondents

Judge: The Honourable Justice Joel Fichaud

Appeal Heard: November 12, 2004

Subject: *Issue Estoppel*

Summary: Adjudicator under *Canada Labour Code* held that respondent was wrongfully dismissed and rejected defence that respondent breached fiduciary duty. Appellant's lawsuit for breach of fiduciary duty stayed by chambers justice.

Issue: Is lawsuit for breach of fiduciary duty barred by issue estoppel?

Result: When the preconditions for issue estoppel exist, the court retains discretion. Chambers justice's failure to exercise discretion was error of law. Discretion is especially significant when first decision is by an administrative tribunal. Court of Appeal reviewed the discretionary factors and held that issue estoppel did not bar the claim for breach of fiduciary duty.

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 15 pages.