

NOVA SCOTIA COURT OF APPEAL

Citation: *Nova Scotia (Occupational Health & Safety) v. Lafarge Canada Inc.*,
2014 NSCA 9

Date: 20140128

Docket: CA 416846

Registry: Halifax

Between:

Director of Occupational Health and Safety

Appellant

v.

Lafarge Canada Inc., Nova Scotia Labour Board and
The Attorney General of Nova Scotia representing Her
Majesty the Queen in right of the Province of Nova Scotia

Respondents

Judges: Saunders, Fichaud and Farrar, JJ.A.

Appeal Heard: November 20, 2013, in Halifax, Nova Scotia

Subject: **Occupational Health and Safety. Occupational Health & Safety Act, s. 14, s. 70 . Occupational Health and Safety Appeal Panel Regulations.**

Summary: Three Administrative Penalties were issued to the respondent on May 5, 2010. The Notices of Administrative Penalty alleged the date of the contravention to be February 24th, 2010 when, in fact, any contravention would have occurred on February 23rd. Lafarge appealed the Notices of Administrative Penalty but did not raise the issue of the wrong date. The Labour Board advised the parties of the discrepancy and, as a preliminary matter, found that the Administrative Penalties should be revoked. The Minister appealed arguing the Labour Board failed to properly interpret and apply the proper law when revoking the penalties.

Issues: Did the Labour Board err in its consideration of the law to be applied when it revoked penalties?

Result: Appeal allowed. The Labour Board failed to properly consider and apply the test that it established in **Kelly Rock Ltd. (Re)**, 2012 NSLB 168. In particular, it did not make any determination about whether the date discrepancy of one day called into question the fundamental accuracy of the documents.

The Labour Board also failed to properly consider and apply s. 14 of the Occupational Health and Safety Appeal Panel Regulations. The proper application of that section would have cured the defect in form or irregularity. The Administrative Penalties were reinstated.

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 7 pages.