

SUPREME COURT OF NOVA SCOTIA

Citation: Dexter Construction Company Ltd. v. Nova Scotia (Attorney General), 2011 NSSC 441

Date: 20111130

Docket: Hfx No. 285919

Registry: Halifax

Between:

Dexter Construction Company Limited

Plaintiff

v.

The Attorney General of Nova Scotia, representing
Her Majesty the Queen, in right of the Province of
Nova Scotia

Defendant

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Judge: The Honourable Justice C. Richard Coughlan

Heard: September 6 and 7, 2011, in Halifax, Nova Scotia

Written Decision: November 30, 2011

Subject: Contracts - Interpretation - Escalator Clause

Summary: Dexter Construction entered into four contracts with the Province of Nova Scotia. All contracts were signed in

2005 and the asphalt work intended to be done in 2006. One of the ingredients of asphalt is Performance Grade Asphalt Binder (PGAB). The price of PGAB increased between the date Dexter tendered the contracts and the time the PGAB was purchased. Dexter is seeking the amount it paid for PGAB over and above the price of PGAB at the time of its bid. The contracts contained a provision which provided for a price increase or decrease for PGAB to be considered if the supplier's posted price increased or decreased subsequent to the end of the calendar year the asphalt work was initially scheduled and certain conditions satisfied. The Province refused to pay the additional amount claimed.

Issue: Is Dexter entitled to the amount it paid for PGAB over the price of PGAB at the time of its bid?

Result: As the conditions set out in the contracts for a price increase for PGAB existed, the Department should have exercised its discretion to pay Dexter the amount of the increase in the price of PGAB.

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