

NOVA SCOTIA COURT OF APPEAL

Citation: *Halifax (Regional Municipality) v. Canadian National Railway Company*, 2014 NSCA 104

Date: 20141124

Docket: CA 422562

Registry: Halifax

Between:

Halifax Regional Municipality

Appellant

v.

Canadian National Railway Company

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Appeal Heard: September 16, 2014, in Halifax, Nova Scotia

Subject: Contracts – Interpretation- *Consensus ad idem*

Summary: Canadian National Railway and Halifax Regional Municipality signed an Agreement that apportioned the repair and maintenance costs of twelve bridges that span CN's railway into Halifax. The arched concrete bridges carry city roads over the tracks. Article 2.2 of the Agreement said that Halifax would pay for "the subsurface layers to the surface of the arch". CN and Halifax disagreed as to who was responsible for the layer of fill beneath the elevation that is tangential to the apex of the arch. On an application for a declaration, the justice of the Supreme Court ruled that Halifax was responsible. Halifax appealed to the Court of Appeal.

Issues: Did the judge misinterpret the Agreement? If not, is the Agreement void for lack of *consensus ad idem*?

Result:

The Court of Appeal dismissed the appeal. Article 2.2, interpreted in the context of the entire Agreement and the surrounding circumstances, reasonably manifests a contractual intent that Halifax be responsible for the subsurface layers to the full plane of the curved arch. Whatever may be the purely subjective view of its municipal officers, Halifax's signature to the written Agreement manifests *consensus ad idem* on an objective basis.

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 20 pages.