In the Court of Appeal of Alberta

Citation: R v Eau Claire Distillery Ltd, 2025 ABCA 331

Date: 20251001
Docket: 2401-0097A
Registry: Calgary

Between:

His Majesty the King as Represented by the Town of Diamond Valley

Respondent

- and -

Eau Claire Distillery Ltd.

Appellant

The Court:

The Honourable Justice Dawn Pentelechuk
The Honourable Justice Anne Kirker
The Honourable Justice Alice Woolley

Memorandum of Judgment

Appeal from the Sentence by
The Honourable Justice J.C. Price
Sentenced the 12th day of March, 2024
(2024 ABKB 134, Docket: 210207866P1)

Memorandum of Judgment

The Court:

[1] On December 7, 2020, the Deputy Fire Chief and Safety Codes Officer of the Town of Turner Valley (now Diamond Valley) served the appellant Eau Claire Distillery Ltd. with Order No. 2020-0001 under section 49 of the *Safety Codes Act*, RSA 2000, c S-1 (Safety Order). The Safety Order directed the appellant to "provide documentation prepared by a qualified individual to indicate the hazardous zoning of [its] facility and compliance with the Canadian Electrical Code" by January 31, 2021. The assessment was to "indicate the extent of the hazards in the building and processes, as to their locations and how significant they are" and thus allow the Safety Codes Officer to determine the appellant's compliance with the Fire Code.

[2] The appellant did not comply with the Safety Order. On March 1, 2021, the appellant was issued a summons charging that, on or about February 1, 2021, it had contravened section 67(4)(d) of the *Safety Codes Act* by failing to carry out the actions required by the Safety Order. On February 24, 2023, following a four-day trial in October and December 2022, the appellant was convicted: *R v Eau Claire Distillery Ltd*, 2023 ABPC 48 at paras 173-174 [*Conviction Decision*].

[3] The trial judge found the appellant had committed the *actus reus* of the offence based on the Safety Codes Officer's testimony. The appellant had been operating as a distillery without a hazardous zoning assessment since its inception in 2014. It was properly served with the Safety Order, and it failed to carry out the required action: *Conviction Decision* at paras 52-59, 64. The trial judge rejected the appellant's various defences, including its defence of due diligence. She considered evidence of steps taken by the appellant prior to and following the Safety Order being issued, including documentation submitted by the appellant to the Safety Codes Officer after the summons date. The trial judge found the appellant had not taken sufficient steps to avoid the Safety Order being issued or to come into compliance after it was issued: *Conviction Decision* at paras 113-140. She concluded:

> I find Eau Claire has not established on the balance of probabilities that it has taken all reasonable steps to comply with the Order. To constitute due diligence, there must be more than a desire to comply, there must have been a genuine, even though, in the circumstances, unsuccessful, effort to comply. There was no genuine attempt in this case. There is insufficient evidence in the case at bar to prove on a balance of probability that Eau Claire exercised due diligence in trying to avoid a breach of the Fire Code and the *Act* and comply with the Order which I have found to have occurred.
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> *Conviction Decision* at para 141.

[4] At sentencing, the respondent conceded the appellant could not be fined for any failures to comply following the date of conviction, but submitted the appellant ought to be fined for each

day up to and including the date of conviction – i.e., February 24, 2023. It argued section 67(5) of the *Safety Codes Act* means liability for a daily fine continues until the date of conviction. Section 67(5) states:

> A person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.

[5] The sentencing judge rejected this position, imposing an initial fine of $25,000 and a daily fine of $500 only for the period after the offence date identified in the information up to the date the information was issued – i.e., the 28 days from February 2 to March 1, 2021: *R v Eau Claire Distillery Ltd*, 2023 ABCJ 160 [*Sentencing Decision*]. She relied on the "golden rule" from *The Queen v Côté*, [1978] 1 SCR 8 at 13 [*Côté*], that an accused be provided with enough information to be "reasonably informed of the transaction alleged against him, thus giving him the possibility of a full defence and a fair trial". Based on that principle, she found that because "the Information only states that Eau Claire failed to comply with the *Safety Codes* Order from February 1, 2021 to March 1, 2021" the appellant had "only been convicted with an offence related to that period of time": *Sentencing Decision* at paras 26-27. She further found the appellant made no admission of non-compliance, "particularly in regard to the offence continuing past the laying of the Information": *Sentencing Decision* at para 13. She said that if the respondent had wanted to pursue the appellant for its failure to comply with the order after March 1, 2021, it would have needed to issue a new information charging the appellant in relation to the subsequent dates: *Sentencing Decision* at para 45.

[6] The appellant did not appeal its conviction or sentence. However, the respondent appealed the sentence imposed on the appellant to the Court of King's Bench. On appeal, it changed its position and argued the appellant should be liable for daily fines not only through to conviction, but also after the date of conviction up to the date its Safety Codes Officer confirmed the appellant had come into compliance, which the respondent advised at the appeal hearing was November 7, 2023.

[7] In addition to section 67(5), the respondent relied on the language of section 68(1) of the *Safety Codes Act*. Section 68(1) reads:

> A person who is guilty of an offence is liable
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> (a) for a first offence,
>
> (i) to a fine of not more than $100 000 and, in the case of a continuing offence, to a further fine of not more than $1000 for each day during which the offence continues after the first day or part of a day, or
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> (ii) to imprisonment for a term not exceeding 6 months,

> or to both fines and imprisonment, and
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> (b) for a 2nd or subsequent offence,
>
> (i) to a fine of not more than $500 000 and, in the case of a continuing offence, to a further fine of not more than $2000 for each day or part of a day during which the offence continues after the first day, or
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> (ii) to imprisonment for a term not exceeding 12 months,
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> or to both fines and imprisonment.

[8] The reviewing judge allowed the appeal: *R v Eau Claire Distillery Ltd*, 2024 ABKB 134 [*Review Decision*]. In her view, the appellant could be fined for each day from February 1, 2021 until the date the appellant had come into compliance, which she accepted was the date the Safety Codes Officer confirmed compliance. The reviewing judge suggested the golden rule from *Côté* did not apply to strict liability offences: *Review Decision* at para 15. Further, she found it would be inappropriate for a new information to be issued, since the legislature "cannot intend for the Crown to issue new information[s] repeatedly for the same underlying offence, being a failure to follow an order, resulting in a dramatic increase in penalty": *Review Decision* at para 16. In her view, the reference to a "continuing offence" in section 68(1)(a) of the *Safety Codes Act* means "the continuation of the activity that constituted the original offence of which the party was found guilty". Here, the appellant had continued the offence from "February 1, 2021 onward until the date at which it complied with the *Safety Codes Act*": *Review Decision* at para 17. Having identified the trial judge's error, the reviewing judge substituted a fine of $75 per day from February 1, 2021 until the date of compliance with the Safety Order, some 1,009 days.

[9] The appellant applied to this Court under section 19 of the *Provincial Offences Procedures Act*, RSA 2000, c P-34 for permission to further appeal the reviewing judge's decision. This Court granted permission, holding the proper interpretation of sections 67 and 68 of the *Safety Codes Act* is a question of sufficient importance to warrant a further appeal: *R v Eau Claire Distillery Ltd*, 2024 ABCA 311 at para 10.

[10] The interpretation of sections 67(5) and 68(1) of the *Safety Codes Act* is a question of law to which no deference applies: *TELUS Communications Inc v Wellman*, 2019 SCC 19 at para 30; *Housen v Nikolaisen*, 2002 SCC 33 at para 8.

[11] The reviewing judge erred in interpreting sections 67(5) and 68(1) to permit sanction for days in respect of which there has been neither reasonable notice of an allegation of misconduct nor adjudication of whether the allegation is made out. Sections 67(5) and 68(1) do contemplate that an "offence", including a "first offence", under the *Safety Codes Act* may constitute a "continuing offence" taking place over multiple days, and that, in such a case, liability would

extend for multiple days. However, nowhere does the legislation obviate the need to reasonably identify for the accused the period over which the "continuing offence" is alleged to have occurred, or suggest that a person charged is not entitled to adjudication with respect to any portion of that period. On the contrary, sections 67(5) and 68(1) are clear that liability arises only "on conviction" and where a "person... is guilty of an offence".

[12] Strict liability offences are not exempt from the rule in *Côté*: a party charged with a strict liability offence also needs to be "reasonably informed of the transaction alleged against him". Here, the respondent commenced proceedings against the appellant by laying an information using the procedure set out for summary conviction offences in the *Criminal Code*. Under the *Criminal Code*, an information "shall contain sufficient detail of the circumstances of the alleged offence to give to the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to": *Criminal Code*, RSC 1985, c C-46, ss 581(3), 795; *Provincial Offences Procedures Act*, s 3. The information laid in this case did not specify the period of non-compliance at issue. It charged the appellant only with failing to carry out the actions specified in the Safety Order "[o]n or about the 1st day of February, 2021". From this, the trial judge reasonably concluded the non-compliance for which the appellant had been given notice was restricted to the period between the date specified in the information (February 1, 2021) and the date when the information was laid (March 1, 2021). There is no basis on which to interfere with that finding.

[13] The appellant has not been tried and found guilty of an offence for any time after March 1, 2021. Whether the appellant failed to comply with the Safety Order after March 1, 2021, and in particular whether it exercised due diligence in its efforts to comply after March 1, 2021, has not been adjudicated. The evidence addressed in the *Conviction Decision* about steps taken by the appellant towards compliance ends in December 2021, and the trial judge found the appellant had made no admission about non-compliance for the period after March 1, 2021. She explicitly stated that the appellant had only been convicted for non-compliance up to March 1, 2021. To treat each day after March 1, 2021 until the date the Safety Codes Officer says the appellant came into compliance as a day on which the appellant's offence continues is to find the appellant guilty without trial or adjudication, a result inconsistent with basic principles of criminal law. We emphasize in this respect that the offence here is one of strict liability, not absolute liability; the issue is not simply whether the appellant failed to comply with the Safety Order, but also whether it failed to comply after exercising due diligence to comply.

[14] We disagree with the reviewing judge's suggestion that the legislature cannot have intended for a person in the position of the appellant to be charged with multiple offences for an ongoing failure to comply with the Safety Order. In the context of limitation periods, the *Provincial Offences Procedure Act*, s 4(2) says that for "an offence that is of a continuing nature, each day or part of a day on which it continues constitutes a separate offence": see also, *R v Goebel*, 2003 ABQB 422 at para 34. The state may prosecute a person for an ongoing failure to comply with a safety order but, importantly, that person is entitled to have their guilt adjudicated prior to

conviction. Fairness is not achieved by punishing a party for an offence for which they have not been convicted.

[15] In short, as explained in the *Sentencing Decision*, the daily fine imposed on the appellant is limited to the days on which its liability for the offence has been charged and adjudicated, namely February 1, 2021 to March 1, 2021.

[16] The appeal is allowed, and the sentence imposed in the *Sentencing Decision* restored.

Appeal heard on September 16, 2025

Memorandum filed at Calgary, Alberta
this 1st day of October, 2025

Authorized to sign for: Pentelechuk J.A.

Kirker J.A.

Woolley J.A.

Appearances:

H.L. Overli, KC
A.P. Frank
for the Respondent

C. Alcock
S. Black
for the Appellant