

Date: April 2, 2014
Appeal No. SSAB 17-2013

Indexed as: BCSSAB 17 (1) 2013

IN THE MATTER OF THE *SAFETY STANDARDS ACT*,
SBC 2003, Chapter 39

AND IN THE MATTER OF an appeal to the
British Columbia Safety Standards Appeal Board

BETWEEN:	A HOME OWNER	Appellant
AND:	BRITISH COLUMBIA SAFETY AUTHORITY	Respondent

REASONS FOR DECISION

Introduction

[1] The appeal in question seeks review of the decision of the Acting Provincial Safety Manager, electrical, (the “PSM”), dated August 12, 2013 (the “Decision”), which confirmed the denial of the issuance of an electrical permit to the Home Owner (the “Appellant”). The Appellant submits that he should be permitted to wire a secondary kitchen in a home owned by him, his wife, son and daughter-in-law (the “Owners”) and intended to be occupied by only the Owners and their children. The Respondent, British Columbia Safety Authority (The “Respondent”) submits that the Decision was correct, or in the alternative, was reasonable, and there is no basis for the Board to vary or set aside the Decision.

Issues

[2] The issue that must be determined in this appeal is whether the Appellant should be issued a building permit to wire a secondary kitchen in a home owned by him, his wife, son and daughter-in-law and intended to be occupied by only the owners and their children.

Facts/Evidence

[3] The parties are not in dispute with respect to the facts in this Appeal. Accordingly, neither party has submitted affidavit evidence. As agreed at an earlier Appeal Management Conference, both parties have provided the Board with written submissions. I have now reviewed the submissions provided to the Board and am prepared to render a final decision with respect to the Appeal.

[4] I find that the property in question is a single-family residence located in Delta, British Columbia, which is owned by the Appellant, his wife, son and daughter-in-law. At the time the Appellant was denied a building permit, the property contained an unregistered suite. It was the Appellant's intention to renovate the unregistered suite and have the renovated suite registered with Delta. I find that it was never the Appellant's intent to rent out the renovated suite. Rather, it was intended that he and the other owners and their children (the Appellant's two grandchildren) would reside in the home and suite.

[5] In order to get the work in question done, the Appellant has since hired a licensed contractor to perform the electrical work in question. However, the Board has agreed to continue to hear the appeal due to the nature of the appeal and the fact that the hearing of the appeal will clarify how secondary suites are to be treated in situations such as the one before the Board.

Position of the Parties

The Appellant

[6] The Appellant states that the rules with respect to homeowners wiring suites should not apply when owners of the home intend to live in both the main portion of the house and the suite. He submits that in situations such as his where no portion of the property will be rented out or occupied by anyone other than registered owners of the property and their minor children that the regulations do not make sense as currently applied. He states that it is illogical to allow a homeowner to wire his whole home and then deny him the right to wire a suite in that home in which he intends to live.

[7] The Appellant further states that there is no safety reason that precludes him from wiring the suite as once he is issued a permit for the work, the wiring he does will ultimately have to pass inspection by the building inspector. In any event, the Appellant submits that he has considerable experience with electrical work and is not a stranger to the safety requirements associated with electricity.

[8] In support of his position, the Appellant relies on the wording of section 17 in the *Electrical Safety Regulation* (the “ESR”) and states that the wording of the regulation permits an owner wiring a secondary suite in circumstances such as his, where all portions of the home will be occupied by registered owners. The Appellant acknowledges Directive D-E3 040 607 1 (the “Directive”) issued by the Provincial Safety Manager, which states that fully detached homes with secondary suites are to be considered multi-family residences for the purposes of interpreting section 17 of the *Electrical Safety Regulation*. However, the Appellant states that the Directive and section 17 of the ESR contradict each other and submits that where this occurs, the ESR should prevail.

The Respondent

[9] The Respondent states that the prohibition on homeowners wiring secondary suites is expressly stated in the ESR and submits that neither the Safety Authority nor the Board have jurisdiction to contravene legislated enactments such as the ESR. The Respondent states that the Directive acknowledged by the Appellant simply reiterates that which is set out in the ESR and that the Provincial Safety Manager is fully authorized to issue such directives.

[10] In this regard, the Respondent states that section 17(1) of the ESR only permits homeowners to perform regulated electrical work in their “fully detached dwelling” and that the term “fully detached dwelling” is defined in the ESR to mean any detached building containing only one “dwelling unit.” In turn, the Respondent states that the term “dwelling unit” is defined in the *BC Electrical Code* as “one or more rooms for the use of one or more persons as a housekeeping unit with cooking, eating, living and sleeping facilities.” The Respondent states that the *BC Electrical Code* is the appropriate source for such definition as the *BC Electrical Code* is adopted by section 20 of the ESR.

[11] Using these definitions, the Respondent submits that the Appellant's self-contained secondary suite functions as a "housekeeping unit with cooking, eating, living and sleeping facilities" and accordingly, the premises no longer contain only one "dwelling unit" as the suite now constitutes a second "dwelling unit." The Respondent states that the moment this change occurs section 17(1) ceases to permit the issuance of a homeowner's permit as there is now more than one dwelling unit and therefore the premises is no longer a "fully detached dwelling."

[12] The Respondent states that the provisions in the ESR turn on the objective criteria of whether a property is comprised of a single dwelling unit or multiple dwelling units. The Respondent submits that subjective criteria such as who is living in a property do not apply and would be impossible to enforce in any event.

[13] With respect to the issue of safety, the Respondent states that pursuant to section 29 of the *Safety Standards Act* (the "Act"), the issuance of an electrical permit does not necessarily result in an inspection by the Safety Authority and that the primary responsibility for the safety of regulated work is vested in the person who performs the work.

[14] The Respondent states that the Safety Authority and the Board are both bound by the *Safety Standards Act* (the "Act") and its associated regulations and that the wording of such legislation can only be changed by the provincial government. Accordingly, the Respondent seeks to have the Appeal dismissed.

Analysis

[15] Section 4 of the ESR sets out who may perform electrical work in the province of British Columbia. Pursuant to section 4(d) of the ESR a homeowner may perform electrical work provided he or she acts in accordance with section 17 of the ESR.

[16] Section 17(1) of the ESR states that "...a homeowner may perform electrical work in their fully detached dwelling under an installation permit."

[17] In order to understand the meaning of section 17(1), we must determine the definition of "fully detached dwelling" since pursuant to section 17(1) a homeowner may

only perform electrical work in a “fully detached dwelling.” Fortunately, this term is defined in section 2 of the ESR:

“fully detached dwelling” means any of the following if occupied or intended by the owner to be occupied as a permanent residence:

- (a) Any detached building containing only one dwelling unit;
- (b) A manufactured home as defined in the *Manufactured Home Act*;
- (c) A recreational vehicle;

[18] Since the property at issue in this appeal is a detached building, we must then determine what is meant by a “dwelling unit.” A review of the applicable legislation indicates that “dwelling unit” is not defined in the Act or ESR. Fortunately, it is defined in the *BC Electrical Code*, which is adopted by section 20 of the ESR. The definition of “dwelling unit” given in the *BC Electrical Code* is “one or more rooms for the use of one or more persons as a housekeeping unit with cooking, eating, living and sleeping facilities.”

[19] A review of the above noted legislation indicates that it not drafted to deal with the legal status of secondary dwelling units. It is worded to simply take into account whether an additional dwelling unit exists or not. It is also not drafted to deal with the occupants of a given property, other than the requirement that a homeowner must intend to reside in the property in question. The issue is whether there is more than one dwelling unit.

[20] Based on the definitions set out above, it is clear that a homeowner may perform electrical work in what is colloquially known as a single family home (ie. a house with one housekeeping unit made up of bedrooms, living area and kitchen/dining facilities). At the time the Appellant applied for a permit to do the electrical work in question the property contained an unregistered suite. Accordingly, when the permit was applied for, the property contained more than one dwelling unit, albeit an unregistered second dwelling unit. Due to the existence of multiple dwelling units at the Appellant’s residence at the time he applied for the permit, the legislation prohibits the homeowner(s) from performing electrical work.

[21] The Appellant raised intriguing arguments regarding when a suite comes into existence. However, given the fact that the property contained an unauthorized secondary accommodation at the time the Appellant sought his electrical permit, those questions do not need to be considered in this appeal as at all material times the property contained two dwelling units.

[22] The Appellant has also raised the issue of safety and states that no harm will come if he and others in similar situations are permitted to perform electrical work in properties such as his. In support of this argument, he sets out his own experience with electrical work and submits that any work he does will be inspected in any event and therefore compliance with the regulations will be ensured.

[23] Section 29 of the Act states:

Except as otherwise provided under this Act a safety officer is not required to inspect regulated work or a regulated product solely because a permit was issued in respect of the regulated work or regulated product.

[24] Accordingly, while I do not doubt the Appellant's experience with electrical work, I accept the Respondent's position that the veracity of any regulated electrical work done always rests with the individual performing such work. Further, when considering an appeal, section 52(1) of the Act requires the Board to consider the maintenance and enhancement of public safety.

[25] In any event, the issue of safety, although important, does not affect the outcome of this appeal. The legislation sets out the rules in this province for performing regulated electrical work. This Board is a creature of statute and only possesses the jurisdiction given to it by its enabling statute, which for the purposes of this Appeal is the Act. Nor does it have the jurisdiction to vary directives issued by the Safety Authority. In any event, the Directive simply captures that which is set out by the legislature in section 17(1) of the ESA.

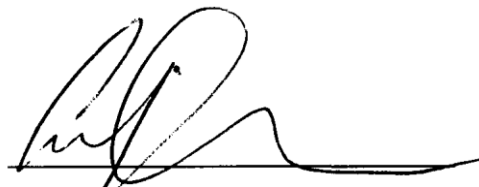
Conclusion

[26] Section 17(1) of the ESR clearly sets out the limited circumstances when a homeowner may perform regulated electrical work. A clear reading of section 17(1) and the associated definitions precludes the Appellant from performing his own electrical work at the property due to the existence of a secondary suite.

[27] That being said, I am not unsympathetic to the Appellant's position. In limited circumstances such as the ones the Appellant finds himself in, where only the registered owners intend to live in a property with a secondary suite (ie. two owners in one dwelling unit and two owners in another secondary dwelling unit), it seems equitable that they ought to be able to perform electrical work in the same manner as other registered owners. However, as set out above, the Board's jurisdiction is limited. The power to make such a change lies solely with the elected legislature.

[28] Accordingly, I must dismiss the Appeal.

Signed:

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long horizontal line extending to the right.