

regarding the nature of the Gatekeeper system, which is the system at issue in this appeal. To summarize, the Gatekeeper system is a system that helps to prevent the theft of shopping carts. The carts are fitted with a locking wheel that interacts with a low frequency, digitally-encoded signal to ensure that the shopping carts are not removed from the area secured with the Gatekeeper system. The Appellants are in the business of selling and installing such systems.

Position of the Parties

The Appellants' Position

[5] Appellants, who are not licensed electrical contractors, submit that the safety officer and safety manager erred when they found that the Gatekeeper system is a regulated product and that the installation of the Gatekeeper system is regulated work requiring a permit to install.

[6] With respect to the Safety Authority's assertion that the Gatekeeper System is a regulated product, the Appellants submit that the definition of "electrical equipment" as set out in the *Electrical Safety Regulation* (the "Regulation") is outdated and practically unusable. They argue that the advances in technology that have been made since the legislation was written are overwhelming and that technology such as cell phones, i-pods, computers, wireless devices and shopping cart containment systems were not considered when the definition was adopted.

[7] With respect to the Safety Authority's assertion that the installation of the Gatekeeper system is regulated work requiring a permit, the Appellants state that they do not need to be licensed as the Gatekeeper system uses an antennae instead of wiring, which transmits a low frequency, digitally-encoded signal. In their submissions, they admit that they use "electrical wiring" to run the antennae as it is a readily available, convenient, cost-effective medium for such transmission. However, they state that the wiring that they use is supplied by the manufacturer. In this regard, the Appellants submit that the Gatekeeper Transmitter can be compared to a television or telephone.

[8] The Appellants submit that both are certified products which may be mounted on the wall. With each, the Appellants point out that you plug the electrical cord into an outlet to power the device and then connect an antennae/cable/phone line to the device to fully use it for its

intended purpose. The Appellants question why a permit is required for the installation of the Gatekeeper system and not for all television and telephone installations.

[9] Finally, the Appellants submit that there is no safety hazard associated with the installation of this antenna. In this regard, the Appellants submit that there have been over 8000 transmitters installed world-wide and that no one has deemed the antennae to be a safety hazard.

[10] In support of their submission, the Appellants have provided the Board with copies of various specifications, test certificates and declarations of conformity for the components of the Gatekeeper system.

The Respondent's Position

[11] The Respondent relies upon the wording in the Act and Regulation to support its position. In this regard, the Respondent submits that under the statutory scheme in place jurisdiction is broadly bestowed on the Safety Authority and that the scope of this jurisdiction is refined in the Regulation and particularized further in the Code. The Respondent states that by adopting the Code in the Regulation that the legislature clearly intended that all provisions of the Code be enforced by the Safety Authority.

[12] The Respondent submits that it is the Safety Authority's job to apply the legislation, not to create it. Counsel for the Respondent states that if the legislature intended the Appellants' work not be regulated it would have carved out an exception to the otherwise broad definitions in the Act, Regulation and Code as it has in other situations.

[13] The Respondent concedes that the definitions of "electrical equipment" and "electrical installation" are exceedingly broad, but submits that they are clearly intended to capture anything using electrical energy that is not specifically exempted. In this regard, the Respondent submits that the legislation does not exempt equipment merely because it is low voltage and that the Code, which is adopted by the Regulation, clearly sets out in the Scope in Section 0 that it covers electrical work at all voltages. The Respondent also notes that the edition of the Code currently in force under the Regulation is the 2012 edition, so the technologies cited by the Appellants should have been contemplated by the Code.

[14] Finally, the Respondent submits that regardless of the legislation, that work such as that done in the installation of a Gatekeeper system does have hazards and is a safety risk, albeit a small one.

[15] In support of its submission, the Respondent provided the Board with an affidavit sworn by the acting Provincial Safety Manager for electrical technology.

Analysis

[17] There is no dispute between the parties that the Appellants did the work at issue in the Review Decision. Nor is there dispute between the parties that the concealed wire at issue transmits electrical current.

[18] In order to determine the issue at hand, the Board must first look at the applicable legislation.

Pursuant to sections 4 and 11 of the Regulation, an individual must not perform regulated work in relation to electrical equipment unless they have the appropriate qualifications as set out in the legislation and must not perform electrical work on electrical equipment without a permit.

[19] Section 1 of the Act defines “regulated work” as a) the assembly, manufacture, construction, installation, operation, testing, maintenance or repair of a regulated product, and b) the alteration of a regulated product.

[20] A “regulated product” is defined by Section 1 of the Act as a product or thing referred to in section 2(1)(b), and if specified in the regulations, a part of that product or thing.

[21] Section 2(1)(b) of the Act sets out the following regulated products:

- (i) Amusement rides
- (ii) Passenger ropeways
- (iii) Boilers and boiler systems
- (iv) Electrical equipment
- (v) Elevating devices and passenger conveyors
- (vi) Gas systems and equipment
- (vii) Pressure vessels

- (viii) Pressure piping
- (ix) Refrigeration systems and equipment
- (x) Any other regulated product specified in the regulations

[22] Section 1 of the Regulation defines “electrical equipment” to include “apparatus, conduits, plant, pipes, poles, works or any other regulated product that is used, designed or intended for use for or in connection with the generation, transmission, supply, distribution or use of electrical energy for any purpose.”

[23] Section 2 of the Regulation defines “electrical work” as “regulated work in respect of electrical equipment.”

[24] Section 0 of the BC Electrical Code (the “Code”), which is adopted in the Regulation, defines “electrical equipment” as follows:

Electrical equipment – any apparatus, appliance, device, instrument, fitting, fixture, luminaire, machinery, material, or thing used in or for, or capable of being used in or for, the generation, transformation, transmission, distribution, supply, or utilization of electric power or energy, and, without restricting the generality of the foregoing, includes any assemblage or combination of materials or things that is used, or is capable of being used or adapted, to serve or perform any particular purpose or function when connected to an electrical installation, notwithstanding that any such materials or things may be mechanical, metallic, or non-electric in origin.

[25] Section 0 of the Code also sets out the scope of the Code to cover “all electrical work and electrical equipment operating or intended to operate at all voltages in electrical installations for buildings, structures and premises....”

[26] Given the broad definitions of “electrical equipment” in the legislation, it is clear that most electrical products qualify as electrical equipment and accordingly would require the necessary qualifications and a permit to install absent a legislated exemption. A review of the applicable legislation indicates there are specific exemptions when a permit is not required for electrical work, however there is no specific exemption that covers the type of product in question in this appeal (ie. The supplied antenna is not part of the certified product and was supplied separately

by the manufacturer). Although, the antenna was supplied by the manufacturer as an accessory it was installed by the appellant and as noted in the regulations requires a permit.

[27] Based on the material filed with the Board by the Appellants, and the fact that nobody had suggested that the Gatekeeper system is not a certified product – rather to the contrary everyone agrees, I find that the product is appropriately certified for operation.

[28] If the Gatekeeper system were installed without the conductors being concealed, and if the existing certification was extended to include the antennae wire supplied by the manufacturer or the instructions for assembly of the certified equipment, the antennae wire would be considered part of assembling a certified unit and no permit would be required. However, that is not the case, the certification mark does not extend to the antennae wire and the wire is concealed. The regulations require a permit for the installation of concealed wiring.

[29] Section 52(1) of the Act requires the Board to consider the maintenance and enhancement of public safety when hearing an appeal. I accept the evidence set out in the affidavit of the provincial safety manager, that while the risk is low given the type of wiring at issue, there is an inherent risk when such wiring is concealed. The concealment of wiring, makes the installation of the product different than the installation of a television or telephone that is simply plugged in and connected to wiring that was earlier installed by a qualified individual under a permit.

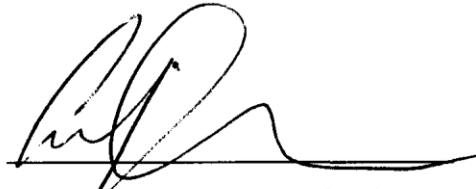
Decision

[30] Based on the application of the facts set out above to the applicable legislation, it is clear that the Appellants installation of the Gatekeeper system is the performance of regulated work pursuant to the Act. Accordingly, the Board finds that the requirement set out in the Review Decision, that the Appellants cease performing regulated electrical work, unless the work is authorized under a valid permit, to be reasonable. While the Board certainly sympathizes with the Appellants' position and recognizes the impact this decision may have on the Appellants' ability to operate as they have done in the past, the Board's jurisdiction, like that of the Safety Authority, is limited to applying the applicable legislation to the facts at hand. The Board does not have liberty to craft exemptions on a case by case basis and accordingly cannot do so.

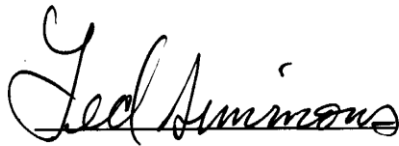
Conclusion

[31] The appeal is dismissed.

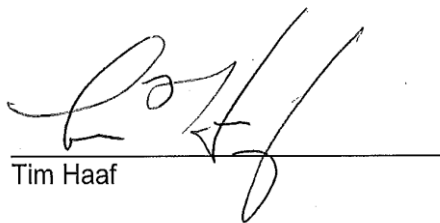
Signed:



Emily C. Drown, Vice-Chair



Ted Simmons, Panel Member



Tim Haaf