

Indexed as: BCSSAB 2 (1) 2009

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

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

BETWEEN:

An Electrical Contractor

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR DECISION

Application to Dismiss Appeal of Certificates of Inspection

Board Member:

Emily C. Drown, Vice-Chair

Introduction

[1] These reasons for decision pertain to an application by the respondent, the British Columbia Safety Authority (the "Safety Authority") to dismiss an appeal brought by the Appellant, an electrical contractor, on the following grounds:

- a) That the Board does not have jurisdiction to hear the appeal;
- b) That the appeal is trivial within the meaning of section 31(1)(c) of the *Administrative Tribunals Act* and ought to be dismissed; and
- c) That the appeal has been appropriately dealt with in another proceeding within the meaning of section 31(1)(g) of the *Administrative Tribunals Act* and ought to be dismissed.

[2] The appeal in question, seeks review of the Safety Authority's application of the BC Electrical Code with respect to certain electrical work performed by the Appellant at three separate residential residences in the lower mainland.

[3] The Appellant opposes the Safety Authority's application and seeks to have the appeal heard by the Board.

Issues

- [4] The issues that must be determined in this appeal are as follows:
1. Whether the Board has jurisdiction to hear the appeal?
 2. Whether the appeal is trivial within the meaning of section 31(1)(c) of the *Administrative Tribunals Act* and the Board ought to exercise its discretion to dismiss the appeal?
 3. Whether the appeal has been appropriately dealt with in another proceeding within the meaning of section 31(1)(g) of the *Administrative Tribunals Act* and the Board ought to exercise its discretion to dismiss the appeal?

Facts/Evidence

[5] In support of its application, the Safety Authority has provided the Board with a Motion to Dismiss as part of its Reply to the Appeal. The Appellant has provided a Response to this motion as requested by the Board. The Safety Authority has also provided the board with a Reply to the Response of the Appellant. The Board's *Rules of Practice and Procedure* make no allowance for such a reply within the context of an initial application to dismiss for want of jurisdiction. That being said, the Board has discretion to permit further submissions and given the timely manner of the Safety Authority's provision of its Reply and the fact that counsel for the Appellant has not opposed the provision of such reply the Board has considered such Reply in coming to this decision.

[6] In support of its application, the Safety Authority submits that the electrical work in question done by the Appellant has been altered so as to now pass inspection. In this regard, the Safety Authority provides a copy of the relevant Certificate of Electrical Inspection and refers to two other Certificates of Electrical Inspection provided by the Appellant. However, upon review of the evidence before the Board, I find that the two other Certificates of Electrical Inspection do not show final approval for all aspects of the electrical work performed. However, from the statement of facts set out in the Appellant's Response I find that the electrical work was ultimately approved when the owner of the homes in question removed certain wet bar fixtures from the room in question.

[7] The Safety Authority correctly submits that the Board takes its jurisdiction from section 52 of the *Safety Standards Act*, which states as follows:

- 52(1) When hearing appeals the appeal board must consider the maintenance and enhancement of public safety;
- (2) Unless an appeal is withdrawn, the parties otherwise agree, or the appeal is resolved in another way, the appeal board must hear an appeal as soon as practicable after receiving the appeal.

[8] The Safety Authority submits that the wording “or the appeal is resolved in another way” from clause 52(2) of the *Safety Standards Act* can be taken to mean “when there is no live issue between the parties” so that the legislative intent of the provision expressly limits the Board’s jurisdiction to existing issues in contention between the parties and not the determination of issues that are moot or purely academic. In further support of this submission, the Safety Authority submits that the Board’s *Rules of Practice and Procedure* and *Guidelines and Practice Directions* do not contain any reference to procedure for the determination of issues that are moot or purely academic and accordingly the appeal ought to be dismissed for the three reasons cited above.

[9] In response, the Appellant opposes the Safety Authority’s application and states that the following grounds of appeal exist regardless of whether the electrical work in question has now received final approval:

- 1) The Electrical Safety Manager exceeded his jurisdiction because his decision to not approve the original electrical work contradicted the requirements of the municipally approved building plan to such an extent that the municipality refused to approve the building plan as revised to conform to the Safety Manager’s decision;
- 2) The Electrical Safety Manager’s decision exceeded his jurisdiction because his decision imposed many unforeseeable requirements to building plans approved by the municipality that the electrical contractor cannot meaningfully offer a bid to the owner to complete the contract for building plans approved by the municipality pursuant to a valid municipality bylaw; and
- 3) The Electrical Safety Manager’s decision exceeded his jurisdiction because his decision creates confusion as to whether the BC Building Code or the BC Electrical Code governs an improvement approved by the municipality pursuant to a valid municipal bylaw.

[10] While not set out in the Response of the Appellant, it is clear from the Notice of Appeal and supporting material provided by the Appellant that also at issue in the appeal is whether the BC Electrical Code was correctly interpreted by the Safety Authority.

[11] In reply, the Safety Authority submits that the Appellant has failed to cite any government bylaws to demonstrate the conflict alleged and further that in any event the Board's jurisdiction will not permit it to determine issues of legislative paramountcy or interpretation of local government bylaws or provincial enactments authorizing local government activities. The Safety Authority also submits that the Safety Authority's role is not to determine what type of structure may be constructed in a particular locale (which it admits is a local government decision), but rather to ensure that the regulated work performed in projects approved by local governments complies with the provincial safety legislation.

The Law

[12] Section 50 of the *Safety Standards Act* gives the Board jurisdiction to hear appeals of decisions made by provincial safety managers pursuant to the *Safety Standards Act*. As submitted by the Safety Authority, when hearing such appeals the legislation requires the Board to consider the maintenance and enhancement of public safety. It is important to note that section 54 of the *Safety Standards Act* also stipulates that the commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed unless the Board orders otherwise.

[13] Section 44 of the *Safety Standards Act* limits the application of certain sections of the *Administrative Tribunals Act* and in particular, indicates that only sections 31(1)(a) to (e) of the *Administrative Tribunals Act* apply to the Board. This means that sections 31(1)(f) and (g) do not apply to the Board.

[14] In addition to the provisions of the *Safety Standards Act*, section 44 of the *Administrative Tribunals Act* stipulates that tribunals do not have jurisdiction over constitutional questions.

Application of Law to the Facts

[15] It is clear from the Appellant's Notice of Appeal, and the various material submitted in support of such appeal, particularly the decisions of the provincial safety

manager, that the Board has jurisdiction to hear the appeal pursuant to section 50 of the *Safety Standards Act*, which stipulates that decisions of a provincial safety manager may be appealed to the Board. However, the Board's jurisdiction is curtailed by section 44 of the *Administrative Tribunal Act*, which states that tribunals do not have jurisdiction over constitutional questions. As the decision under appeal is that of a provincial safety manager, the Board, subject to section 44 of the *Administrative Tribunal Act*, has jurisdiction to hear the appeal. Accordingly, the issue with respect to whether or not the Board has jurisdiction to hear this appeal, therefore becomes a question of whether or not constitutional questions are raised by the appeal.

[16] In this regard, the Safety Authority has submitted that the Appellant's submission that the decision under appeal infringes the powers of a local municipality raises issues of legislative paramountcy. While I agree that the Appellant's submission raises questions of legislative paramountcy, I do not find that the issues raised in the appeal relating to legislative paramountcy (ie. those issues that require the Board to determine the scope of the Safety Authority's jurisdiction versus the local municipality's jurisdiction) are constitutional questions. In this regard, a constitutional question is a question that pertains to the interpretation of the *Constitution Act, 1867 to 1982*. While questions of legislative paramountcy may arise in the within appeal, I find that as the matters at issue hinge on the interpretation of provincial legislation as applied to the facts set out in the within appeal, all of which stem directly from the decision of a provincial safety manager, that the Board does have jurisdiction to hear the within appeal.

[17] This finding requires the Board to now consider the other arguments of the Safety Authority. Namely, whether the appeal is trivial and the board ought to exercise its discretion pursuant to section 31(1)(c) of the *Administrative Tribunals Act* and dismiss the appeal or whether the appeal has been appropriately dealt with in another proceeding and the board ought to exercise its discretion pursuant to section 31(1)(g) of the *Administrative Tribunals Act* and dismiss the appeal. I note that section 31(1) of the *Administrative Tribunal Act* does stipulate that a tribunal "must" dismiss an appeal, but rather states that the tribunal "may" dismiss an appeal. This wording is a clear indication that the Board has discretion to exercise when applying this section of legislation.

[18] With respect to the question of whether the appeal is trivial within the meaning of section 31(1)(c) of the *Administrative Tribunals Act*, the Safety Authority relies on the

argument that the appeal on this point is moot now that the electrical work in question has passed inspection and has been approved. Accordingly, the Safety Authority asks that the appeal be dismissed.

[19] With respect to this argument, I note that pursuant to the *Safety Standards Act* that all decisions of the safety manager must be complied with during the course of an appeal unless the Board grants a stay of the manager's decision. This provision means that if parties do what the legislation stipulates and comply with a safety manager's decision while an appeal to the board is underway that all issues before the Board will out of necessity be moot or trivial unless the Board grants a stay of a decision pending the outcome of an appeal. It does not make sense then for the Board to then dismiss an appeal simply because an appellant has complied with a safety manager's decision while an appeal is underway.

[20] I also note that the law is very clear as to what "moot" means in a legal application. In this regard, I refer to *Borowski v. Canada*, [1989] S.C.R. 342, in which the Supreme Court of Canada established a two part test to determine if an issue is moot. First, the court must determine whether the concrete underlying dispute disappeared.

[21] Second, if so, the court must determine whether it should exercise its discretion to hear the case anyway. Based on this test, and the wording of the *Safety Standards Act*, which requires compliance with the safety manager's decision during the course of an appeal, I find that the issue is not moot or trivial and hold that the Board should not exercise its discretion pursuant to section 31(1)(c) of the *Administrative Tribunals Act*.

[22] With respect to the Safety Authority's submission that the remaining issue on appeal has already been appropriately dealt with in another proceeding, I find that section 31(1)(g) of the *Administrative Tribunals Act* does not apply to the board and accordingly, the Board has no jurisdiction under section 31(1)(g) to dismiss the appeal. That being said, I note that similar language is used in section 52(2) of the *Safety Standards Act*, which arguably provides jurisdiction for the Board to dismiss the appeal on the ground that the appeal has been resolved in another way. However, other than the Safety Authority's submission that this appeal has been resolved through the Appellant's compliance with the decision of the provincial safety manager, there is no evidence before the Board that the issues arising in this appeal have been resolved in the context

of another appeal or legal proceeding. For the reasons given above with respect to the requirement of an appellant to comply with a safety manager's decision while an appeal is underway, I find that the remaining issue is properly before the Board and I decline to dismiss the appeal on the ground that the appeal has been resolved in another way.

Conclusion

[23] To summarize, the answers to the issue before the Board are as follows:

1. The Board has jurisdiction to hear the within appeal.
2. The Board declines to dismiss the appeal pursuant to section 31(1)(c) of the *Administrative Tribunal Act*.
3. The Board declines to dismiss appeal pursuant to section 31(1)(g) of the *Administrative Tribunal Act*.

Based on the above, the within appeal should proceed to an appeal management conference at the earliest opportunity.

SIGNED:

by the registrar for:



Emily C. Drown, Vice-Chair