

Indexed as: BCSSAB 6 (1) 2009

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 Retailer of Consumer Electronics

Appellant

AND:

British Columbia Safety Authority

Respondent

REASONS FOR DECISION
Compliance Order Issued for Performing Electrical Work Without a Permit

Board Members:

Emily C. Drown, Vice-Chair
Dennis Burke
Ted Simmons

Introduction

[1] The appeal in question seeks review of the decision of the Provincial Electrical Safety Manger (the PSM), dated March 24, 2009, which confirmed the Compliance Order of the Safety Officer made on or about February 20, 2009. The scope of the appeal will be set out in more detail below; however, to summarize it is an appeal by a retailer of consumer electronics (the Appellant) of the British Columbia Safety Authority's ("BCSA") application of the *Safety Standards Act*, RSBC 2003, Chapter 39 (the "Act") and associated regulations with respect to the concealment of speaker wires in the course

of connecting home theatre systems purchased by the customer's of the Appellant's retail division (the Retailer).

Issues

[2] The issue that must be determined in this appeal is as follows:

1. Whether the concealment of speaker wires behind drywall is "regulated work" pursuant to the *Safety Standards Act*, SBC 2003, chapter 39 and associated regulations.

Facts/Evidence

Evidence Provided to the Board

[3] The parties agreed to present their evidence in Affidavit form to the Board to facilitate the expeditious conduct of this appeal. The Appellant submitted Affidavit #1 of a lead technician (the Technician) for the Retailer's Installation Division (the Installer), sworn July 30, 2009 and Affidavit #1 of the Director of Services (the Director) for the Retailer, sworn July 30, 2009. The BCSA submitted Affidavit #1 of the PSM, sworn September 4, 2009. In response to this Affidavit, the Appellant submitted Affidavit #2 of the Technician, sworn September 18, 2009. The PSM was cross-examined on his affidavit on October 28, 2009. The Technician and the Director were not cross-examined on their affidavits. The parties provided written submissions to the Board on December 8, 2009.

Background Facts

[4] The Installer is a division of the Retailer, which is itself a division of the Appellant. The Installer's technicians receive ongoing training and provide a variety of services to customers of the Retailer. The services provided by the Installer's technicians include the following: a) mounting consumer electronic devices on walls or other locations, including television panels and audio systems, b) setting up electronic devices; c) calibrating audio/video systems, d) managing the design, implementation and completion of home theatre installations; and e) concealing speaker wires behind drywall. The Installer's technicians do not reposition electrical outlets or conceal power cables or speakers behind walls.

[5] It is agreed by the parties that the only work at issue performed by the Installer's technicians in the course of providing concealment services is the fishing of the speaker wire behind drywall. That being said, the PSM stated on cross-examination that the technicians would also be subject to the BCSA's jurisdiction if they connected wall plates at the two locations where the speaker wires enter the wall if the wall plates attached to the speaker wires and if they reassembled the plugs on the ends of the speaker wires. Clearly, there is evidence that the Installer's technicians fish speaker wire behind drywall. However, there is no evidence before the board that the technicians connect wall plates attached to speaker wires or reassemble plugs on the ends of speaker wires. Accordingly, these reasons deal only with the issue of the concealment of speaker wire behind drywall.

Safety Concerns

[6] On behalf of the BCSA, the PSM set out safety concerns regarding the concealment of speaker wires in his Affidavit:

...there is a safety risk inherent to concealed wiring of home theatre systems. The risk of electrical shock may be reduced owing to the low voltage of the application; however, the main risk associated with this type of work is the risk of fire from the overheating of electrical wires and or their terminations. Also, the combustion by-products, whether caused by a fire of electrical or other origin, can be hazardous, particularly when involving concealed wiring where the spaces inside walls or other plenums act to disperse those fumes throughout the dwelling.

[7] The only evidence provided to the Board by the Appellant that could possibly be taken to refute this statement is found in Affidavit #1 of the Technician, where he states as follows: "I am not aware of a single safety issue arising from any concealed installation project undertaken by any ... technician (employed by the Installer)." However, on cross-examination, the PSM confirmed that he is not aware of any incidents in which a fire or electric shock has occurred in work performed by the Installer's technicians.

[8] The PSM also deposed in his affidavit that the speaker wire supplied by manufacturers of consumer audio video equipment is not approved to be concealed behind drywall and is not rated for this application. However, in Affidavit #2 of the Technician, it was deposed that the Installer's technicians only conceal speaker wire that meets the requirements for concealment behind drywall. That being said, neither the

Technician nor the Director denied in their affidavits that the home electronics at the heart of this appeal are powered by electrical energy or that the concealed wires transport electrical energy.

The Decision Under Appeal

[9] On or about February 20, 2009, the Compliance Order in question was issued. The original Compliance Order was issued to the Retailer not the Appellant; however the parties agreed in the course of this proceeding to cure this defect by consent. By the Compliance Order, the Appellant was ordered to: a) immediately cease and desist operating as an electrical contractor unless it obtained an electrical contractor's license under section 23 of the Act; b) immediately stop performing electrical work, or allowing, condoning or authorizing the performance of electrical work, unless the work is authorized under a valid electrical permit or exempted under s.18 of the *Electrical Safety Regulation*, BC Reg 186/2009; and c) immediately conduct a review of all work performed by the Installer between February 16, 2008 and February 16, 2009. The Appellant sought a review of the Compliance Order by the PSM. The PSM confirmed the Compliance Order stating that "home theatre systems use electrical energy and are therefore a regulated product and the installation of these and similar systems is regulated work". In coming to the decision to confirm the Compliance Order, the PSM drew a distinction between certified equipment that is designed by the manufacturer to be inter-connected by the user and equipment that is installed stating that it is the latter that is regulated work within the scope of the Act.

Analysis

The Law

[10] The definition of electrical equipment, and hence the issue on appeal, is determined by reference to the following:

- a) Sections 1, 2(1)(b) and 88(2) of the *Safety Standards Act*
- b) Sections 1, 2, 15, 18 and 20 of the *Electrical Safety Regulation*; and
- c) Section 0 of the *Canadian Electrical Code Part I* (the "Code").

[11] Section 2 of the Act states that the Act applies to all persons doing “regulated work” and all “regulated products” including “electrical equipment”. “Regulated work” is defined in section 1 of the Act as: “a) the assembly, manufacture, construction, installation operation, testing maintenance or repair of a regulated product, and b) the alteration of a regulated product.” A “regulated product” is defined as “a product or thing referred to in section 2(1)(b), and if specified by the regulations, a part of that product or thing.

[12] Given the scope of this appeal, the only “regulated product” before the board is “electrical equipment”. The phrase “electrical equipment” is not defined in the Act. However, section 88(2) of the Act permits the minister to make regulations defining any term or word used but not defined in the Act. Consequently, section 1 of the *Electrical Safety Regulation* states for the purposes of the Act that electrical equipment includes “apparatus, conduits, plant, pipes, poles, works and any other regulated product that is used, designed or intended for use in connection with the generation, transmission, supply, distribution, or use of electrical energy for any purpose” [emphasis added].

[13] Sections 15 and 18 of the *Electrical Safety Regulations* set out a number of exceptions to the application of the regulation, such as regulated utilities and the performance of certain electrical work. The work required to conceal the speaker wires in question in this appeal is not exempted from the regulation.

[14] Section 20 of the *Electrical Safety Regulation* adopts the Canadian Electrical Code Part I, as amended in the Schedule to the regulation, as the Code. Section 0 of the Code sets out the object of the Code and states that the purpose is to establish safety standards for the installation and maintenance of electrical equipment. It further states that one of the objects of the code is to prevent fire and shock hazards. In this regard, the scope of the Code makes specific reference to the fact that all voltages of electrical equipment are included.

[15] In addition to the legislative provisions set out above, in formulating its decisions the board must consider the maintenance and enhancement of public safety, pursuant to section 52(1) of the Act.

[16] During oral submissions counsel for both parties agreed that the law regarding statutory interpretation as it applies to the issue in this appeal is as set out in *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 S.C.R. 27, at para. 21, namely that “there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”

[17] While the parties agree on the law governing the interpretation of the legislative provisions at issue in this appeal, they do not agree as to the outcome of such interpretation. Counsel for the Appellant submits that the definitions set out in the legislative provisions noted above are sweeping in nature and that to interpret them in such a way as to include the concealment of speaker wire as “regulated work” creates an absurdity out of the legislation.

[18] As mentioned, counsel for the BCSA does not disagree with the statement of the law of statutory interpretation submitted by the Appellant’s counsel. He does however take issue with the Appellant’s argument that inclusion of the concealment of speaker wires as regulated work leads to an absurdity and submits instead that such inclusion is not only not absurd, but is the clear intention of the legislature given the fact that a number of exceptions are carved out of the scope of the legislation such as regulated utilities and certain specific work.

Application of Law to the Facts

[19] If the concealment of speaker wire behind drywall is found to be “regulated work” or a “regulated product” as defined in section 1 of the Act, the Appellant’s appeal cannot succeed. In order to determine whether this is the case, the Board must determine whether the work performed by the Installer’s technicians while concealing speaker wire behind drywall falls within the scope of the legislation. As set out above, when it comes to electrical equipment, one must look at definitions set out in the *Electrical Safety Regulation* in order to determine whether something is electrical equipment or not. Accordingly, the issue that the Board must determine in this appeal is whether the concealment of speaker wire behind drywall is “apparatus, conduits, plant, pipes, poles,

works and any other regulated product that is used, designed or intended for use for in connection with the generation, transmission, supply, distribution, or use of electrical energy for any purpose”.

[20] As stated by the Supreme Court of Canada in *Rizzo v. Rizzo Shoes Ltd (Re)*, in order to determine whether the work in question falls within the scope of this definition the Board must read the words in context using their ordinary meanings, harmoniously with the scheme of the *Safety Standards Act* and associated regulations, and the intention of the legislature. While the Appellant provided a number of definitions for the words used in its submissions, the language in the statutory provision in question is not complicated. In fact, the legislation is clear and unambiguous when read using the ordinary meanings of the words used. It is clear that all products that are designed and intended to be used with electrical energy for any purpose are within the scope of the legislation. Any ambiguity associated with this provision comes not from the language used, but the breadth of its scope. If taken at its face value all products, wires, pipes, apparatus, etc. using electrical energy would be regulated products. Of course, this is not practical nor can it be what was intended with the legislation. Otherwise, permits and inspections would be required for the use of commonplace household appliances that use electricity. Accordingly, a line must be drawn in order to determine what items are regulated and what are not. However, the law requires the Board to do more than simply use the ordinary meaning of the words found in the provision at issue. In coming to its decision the Board must also consider the scheme of the *Safety Standards Act* and associated regulations and the intention of the legislature.

[21] Public safety is the principle underlying the *Safety Standards Act* and associated regulations. Furthermore, the *Safety Standards Act* states that the Board must consider the enhancement and maintenance of public safety in all appeals. While the Board appreciates that the Installer has an impressive safety record, especially considering that the Installer has performed approximately 5,000 concealed installations, the Board finds that there is no evidence directly rebutting the safety concerns raised in the PSM’s affidavit and accordingly finds as fact that the concealment of wiring of home theatre systems possesses an inherent safety risk. Accordingly, the Board finds that in order to

maintain and enhance public safety that the concealment of speaker wire behind drywall is regulated work pursuant to the Act. To do otherwise would be to turn a blind eye to public safety.

[22] While the issue on appeal as framed by the parties is whether the concealment of speaker wire is “regulated work” pursuant to the *Act*, there has been some suggestion by the BCSA that power cables and other associated cabling is also concealed from time to time. This suggestion has been rebutted by the Affidavits submitted by the Appellant. However, in the interest of public safety the board finds that such concealment, if it were to occur, would also be “regulated work”.

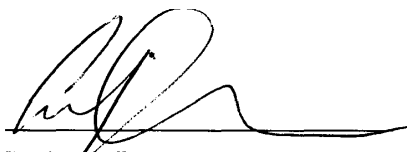
Conclusion

[23] To summarize, the answer to the issue before the Board is as follows:

1. The concealment of speaker wires behind drywall is “regulated work” pursuant to the *Safety Standards Act*, SBC 2003, chapter 39 and associated regulations.

[24] As a result of this conclusion, the Appellant’s appeal is dismissed. Should the parties not be able to determine the issue of costs between themselves they are at liberty to apply to the board for further decision in this respect.


SIGNED:



Emily C. Drown, Vice-Chair



Dennis Burke, Panel Member



Ted Simmons, Panel Member