

Date Issued: June 4, 2019
Appeal No. SSAB 27-2018

**IN THE MATTER OF THE *SAFETY STANDARDS ACT*,
S.B.C. 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the
BRITISH COLUMBIA SAFETY STANDARD APPEAL BOARD**

BETWEEN:

Homeowner

APPELLANT

AND:

Technical Safety BC

RESPONDENT

REASONS FOR DECISION

Safety Standards Appeal Board:

Jeffrey Hand

Representing the Appellant:

Homeowner

Technical Safety BC:

David Clancy

INTRODUCTION

[1] This an appeal of a decision of the Safety Manager dated November 29, 2018 (the "Decision") which varied a Certificate of Inspection dated April 27, 2018 ("Certificate of Inspection") in respect of certain electrical work in progress at the home of the Appellant located in Victoria, British Columbia, (the "Home").

[2] The Appellant says that the Certificate of Inspection failed to identify alleged deficiencies in the electrical work being performed at the Home and he asks that the Certificate of Inspection be amended to state that no inspection took place.

[3] The Respondent says that the Certificate of Inspection, as amended by the Safety Manager to state that an inspection limited to identifying safety hazards was performed, is correct and should not be varied.

[4] This appeal proceeded by way of written submissions.

ISSUE

[5] The issue on this appeal is whether the Safety Manager's decision should be upheld, varied, or set aside.

FACTS

[6] The Appellant is the owner of the Home. In or about December, 2017 the Appellant retained an electrical contractor to perform renovation work in relation to the kitchen at the Home (the "First Contractor"). The First Contractor obtained an Electrical Permit dated December 17, 2017, EL-629749-2017 (the "First Electrical Permit") to perform the required electrical work for the renovation. The First Electrical Permit described the work as "changing out panel".

[7] The work in the kitchen proceeded to what is typically referred to as the "rough-in stage" by February 19, 2017. Rough-in refers to wiring and receptacles having been installed into the framing of the walls but prior to installation of drywall and insulation that would thereafter conceal that wiring from view.

[8] On February 20, 2018 a Safety Officer employed by the Respondent waived the requirement for a Safety Officer to physically inspect the rough-in wiring choosing instead to rely on a declaration of compliance obtained from the First Contractor who was qualified as a Field Safety Representative Class B ("FSR") and qualified to give such a declaration. The First Contractor filed a Declaration of Compliance dated February 19, 2018.

[9] After this point the appeal record is lacking in detail but it seems that the relationship between the Appellant and the First Contractor deteriorated, resulting in the First Contractor's services being terminated on or about April 3, 2018. The First Contractor was not permitted to return to the site.

[10] The Appellant thereafter retained a new contractor to complete the work, which at that stage was in progress and not yet finished (the "Second Contractor"). The Second Contractor took out a permit on April 27, 2018.

[11] On April 3, 2018 the Appellant made a request of the Respondent that they send a Safety Officer to the Home to conduct an inspection of the electrical work that had been performed.

[12] The Safety Officer attended at the Home on April 27, 2018. The Safety Officer was aware that the First Contractor had been terminated and that the Appellant had retained the Second Contractor to complete the work. There was need to close out the First Electrical Permit in order for the Second Contractor to proceed.

[13] The Appellant and the Respondent disagree as to what precisely was discussed between the Appellant and the Safety Officer during this inspection and they disagree as to the scope of the inspection that was performed. The Appellant goes so far as to say that no inspection was performed. I will return to this issue later in these Reasons.

[14] The Safety Officer passed the inspection, indicating that he did not observe any non-compliances.

[15] During the course of continuing with the work at the Home the Appellant says that the Second Contractor identified five electrical code deficiencies:

1. Missing ground wire at electrical panel in the basement.
2. Lack of bonding at electrical receptacles.
3. Improper loading of a 15 amp receptacle.
4. Non-compliant 20 amp circuits.
5. Missing strapping of 5 metres of teck cable.

[16] Aside from the missing ground wire at the electrical panel, which is located in the basement of the Home, the appeal record contains no evidence concerning the location of the other four deficiencies. The Appellant says that as of May 26, 2018 items 2, 3, and 4 from the deficiency list had been remedied.

[17] The relationship between the Appellant and the First Contractor appears to have continued to deteriorate because there is mention in the appeal record of a dispute between those parties regarding payment for services that was referred to the Civil Resolution Tribunal.

[18] On May 26, 2018 the Appellant requested that the Safety Manager perform a review of the Certificate of Inspection issued after the Safety Officer's attendance at the Home on April 27, 2018.

[19] On November 29, 2018 the Safety Manager rendered a written decision which stated, among other things, that the inspection that was performed on April 27, 2018 was intended only to determine that there were no safety or shock hazards existing with the work performed to date and that such inspections, performed during the progress of electrical work, are not intended to identify non-compliances with the Canadian Electrical Code. He amended the April 27, 2018 Certificate of Inspection to reflect this limited scope of inspection.

[20] The Appellant takes issue with that amendment and instead wants the Certificate of Inspection to say that no inspection was actually performed.

ANALYSIS

[21] It is helpful at the outset to review the regulatory framework under which regulated electrical work is approved in British Columbia.

The Electrical Safety Regulation, BC Reg 100/2004 provides at Section 19:

19. Inspection of Electrical Work

19(1) If a person holds an electrical installation permit, the Field Safety Representative named on the permit must request an inspection at least once in a 180 day period.

19(4) A person must not do any of the following unless the regulated work has been inspected or the inspection has been waived:

- (a) conceal any portion of the rough wiring;
- (b) connect power to the electrical supply systems;
- (c) if the inspections required for other than the last phase, work on the next phase of the electrical work.

19(6) After receiving a request under Section 1 or 3 the Regulatory Authority may require:

- (a) an inspection or;

- (b) a declaration that the work performed under the permit complies with the *Act* and the Regulations.

[22] While the Regulation permits Safety Officers to conduct inspections of electrical work, it is noteworthy that the Regulations also provide that Safety Officers can waive that requirement and instead rely on declarations from Field Safety Representatives that the work that has been performed complies with the Act and Regulations.

[23] An Affidavit filed in this appeal confirms the foregoing and explains that the rationale for this approach is that it is not possible for Safety Officers to inspect every installation. Rather, Technical Safety BC randomly elects to inspect properties based on a risk assessment. The details of that risk assessment are not explained in the evidence or submissions that have been made.

[24] The Decision explains TSBC's approach to inspections that occur while work is being performed but not yet complete. The Safety Manager says that work that is in the process of being completed is not normally expected to fully comply with the Canadian Electrical Code until such time as the work is completed and the work has been energized. Interim inspections are typically limited to ensuring that shock hazards or other safety concerns do not arise with work that is underway for the safety of contractors performing the work and for the occupants of the building. He also states that it is not possible to hold permit holders accountable for non-compliance in instances, such as occurred here, where the contractor is no longer allowed on the project site.

[25] With these comments in mind it would seem that a Safety Officer did not inspect the rough in wiring work performed by the First Contractor in February, 2018, electing instead to rely on a declaration from the First Contractor that he had physically reviewed the work and it was compliant. The Respondent was entitled to waive a physical inspection by their own Safety Officers pursuant to Section 19 of the Regulation.

[26] Shortly after the Declaration of Compliance filed by the First Contractor, the Appellant terminated the First Contractor's services and retained the Second Contractor to complete the work. According to TSBC's submissions, the expectation at that point would be that the Second Contractor would ultimately be responsible, at the conclusion of the work, to declare all of the

work performed, both his and that of the First Contractor, to be compliant with the Act and Regulations.

[27] I turn to some of the specific points raised by the Appellant in his submissions.

Was there an Inspection Performed by a Safety Officer on April 27, 2018?

[28] There is no disagreement on the evidence that the Safety Officer attended at the Home on April 27, 2018 following a request that had been made by the Appellant. The Appellant maintains that the Safety Officer remained in the kitchen area and that in the course of his attendance he had a conversation with the Safety Officer whereby he was advised that Safety Officers do not perform inspections.

[29] In answer to this allegation there is a sworn Affidavit of the Safety Officer who attended at the Appellant's Home on April 27, 2019. He states that he was in attendance at the Home for approximately one hour during which time he inspected the wiring in the kitchen and determined that it had not yet been energized. He says he inspected the receptacles that had been installed. He observed that the wiring within those receptacles had not yet been completed. He says that he did not inspect the electrical panel in the basement of the Home. The Appellant did not ask him to do so and neither did the Appellant advise him of any concerns relating to the electrical panel.

[30] He testified that it was his intention in performing the inspection on April 27th to confirm that there were no shock hazards that would prevent the work from being completed by the Second Contractor. He says he did not intend to determine whether all of the work that had been performed to date met the Electrical Code believing that such a determination would have to await completion of the works. That said, he agrees that the Certificate of Inspection that he prepared, and which the Safety Manager subsequently revised, did not adequately describe the scope of his inspection. He agrees that it left the impression that he had determined all work performed was code compliant.

[31] As for the conversation between the Safety Officer and the Appellant on April 27th there is no disagreement that their conversation included an explanation of the inspection regime followed by Technical Safety BC whereby not every property is subject to an inspection by a Safety Officer

but rather some work is inspected by Safety Officers and others are accepted as compliant based on declarations from the Field Safety Representative designated in the electrical permit.

[32] Based on the sworn testimony of the Safety Officer I accept his evidence that he performed an inspection that day within the confines of the kitchen and I accept that he provided the Appellant with an explanation of the inspection regime TSBC utilizes. I do not accept that he would have told the Appellant that he did not perform inspections at all since that would be not only inconsistent with his sworn testimony that he performed an inspection but also inconsistent with the fact that he attended at the Home that day. If it was not to perform an inspection then what would have been the purpose of his attendance at the Home?

[33] I find it more likely that the Appellant misunderstood the Safety Officer's explanation of the inspection regime, erroneously interpreting it as suggesting that Safety Officers never perform inspections.

[34] The Appellant submits that while a Safety Manager attended at his Home on April 27th, in fact no inspection at all was performed. In his written submissions he invites the Board to conclude that there was no evidence upon which the Safety Manager could conclude that such an inspection had been performed or if there was inspection it was actually confined to identifying shock hazards. He points to the fact that the Certificate of Inspection prepared by the Safety Officer does not specifically make reference to shock hazards.

[35] The Safety Manager's Decision makes it clear that he undertook a review of the whole of the circumstances of this inspection. He spoke to the Safety Officer and the First Contractor. He considered evidence beyond the Certificate of Inspection. He concluded that a safety inspection had occurred, albeit one that was improperly described in the Certificate of Inspection.

[36] Section 53 of the *Safety Standards Act* provides that this appeal is a new hearing. The Board is entitled to make determinations based on the evidence before it and the Board is not restricted to consider only the information that was available to the Safety Manager. The Board now has the benefit of the Safety Officer's sworn Affidavit. The issue is not whether the Safety Manager could reach the conclusion he did but rather whether this Board is of the view that the Decision should be altered based on the evidence the Board has to consider.

[37] The Board is satisfied that an inspection in the scope described by the Safety Manager in his Decision did take place on April 27, 2018.

Did the Home Contain Electrical Code Deficiencies as of April 27, 2018?

[38] The Appellant alleges that there are five deficiencies in the electrical work found in the Home. However, the Appellant has not provided any evidence on which the Board can conclude that these deficiencies were present as of April 27, 2018, or whether they were in fact observable at that time. The Board would have expected some evidence from a suitably qualified expert, perhaps the Second Contractor, concerning the existence of these alleged deficiencies. There was no such evidence in the material filed by the Appellant.

[39] Perhaps more importantly, whether such deficiencies existed at that time or not, is not relevant to the Certificate of Inspection performed by the Safety Officer on April 27, 2018 because the Board accepts that any work that had been underway in the Home would not necessarily be expected to be fully compliant with the Act and Regulations until such time as the work was completed and certified complete by a qualified FSR.

[40] The Board accepts that it is sufficient for the Safety Officer to confirm whether the work performed in the kitchen was de-energized and therefore free of shock hazards such that the work could continue and be completed by the Second Contractor.

[41] I note that the Appellant has confined his request for relief in his submissions to a request that the Board find that no inspection for fire and shock hazards actually took place. He has not asked the Board to determine whether the safety inspection performed by the Safety Officer was indeed adequate or whether that inspection should have considered whether the electrical panel was properly grounded although his written submissions certainly allude to that assertion.

[42] In this regard the submissions received do not address the issue of whether the missing ground wire constituted an electrical shock hazard. The Appellant says that it is self evident that it did constitute a hazard but he tenders no expert evidence on this point. The Safety Manager's Decision and the submissions of his counsel are silent on this point.

[43] Even if the Board were in a position to conclude that the missing ground wire should have been recorded on the safety inspection, the Board finds that such an amendment would serve no

purpose at this time. If the missing ground wire was a safety concern, this was clearly known to the Appellant and the Second Contractor in May, 2018. It seems highly unlikely that the Appellant would allow that condition to persist. In the absence of some evidence to the contrary the Board assumes that this condition has since been rectified.

[44] While the choice of wording utilized by the Safety Officer in the original preparation of this Certificate of Inspection was inaccurate, any error in that regard was rectified once the Safety Manager amended the Certificate to reflect the limited scope of inspection performed. The Board finds there is no need for further amendment of the Certificate of Inspection.

CONCLUSION

[45] The decision of the Safety Manager is confirmed and the appeal is dismissed.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

Jeffrey Hand, Chair