

Date Issued: November 3, 2009

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

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

BETWEEN:

An Electrical Contractor

Appellant

AND:

BC Safety Authority

Respondent

**REASONS FOR FINAL DECISION
Appeal Challenging the Application of the
BC Electrical Code**

Board Member:

Emily Drown, Vice-Chair

Introduction

[1] The appeal in question, seeks review of the British Columbia Safety Authority's ("BCSA") application of the BC Electrical Code with respect to certain electrical work performed by the Appellant, an electrical contractor, at three separate residential residences in the lower mainland (collectively "the Properties"). The Appellant is the owner and field safety representative of an electrical contracting business.

At issue is whether the BCSA correctly applied the British Columbia Electrical Code (the "Code") when the electrical safety officers failed to approve electrical work done at each of the Properties on the grounds that the electrical work in the lower portion of each of the Properties did not comply with the Code requirements for kitchen and bedroom areas in a secondary suite. The Appellant contends that the areas in question were not secondary suites and that the areas in question were not kitchens and bedrooms, but

rather bar areas and dens of single family homes and states that the BCSA wrongly denied approval of the electrical work performed. The BCSA opposes the appeal and states that the safety officers in question objectively determined that the areas of the Properties were kitchens and bedrooms and were correct to apply the Code as they did.

Complicating matters is the Appellant's assertion that compliance with the safety officers' decisions would make it impossible to get final approval for occupancy by the municipal building inspectors as the inspectors refuse to provide approval for homes wired as a secondary suite when zoning, covenants or bylaws prohibit such suites.

Issues

The issues that must be determined in this appeal are as follows:

1. Whether the intended use of a property must be taken into account when applying the Code;
2. Whether the use of a property as represented to a municipality is determinative of the intended use of a property or whether safety officers may objectively determine such use upon viewing a property; and
3. Whether the intended use of each of the Properties, when judged objectively by the safety officer, was to contain a secondary suite and if so, whether the Code was properly applied.

Facts/Evidence

The Appellant submitted two affidavits to the Board, both sworn by the Appellant. The Respondent also submitted two affidavits, both sworn by electrical safety officers. Each of the Affidavits refers to a number of exhibits. The affidavits provide important detailed information regarding the inspection process for the electrical work performed by the Appellant at each of the Properties. However, for the purposes of these Reasons for Decision, I set out the following summary of the evidence:

- a) None of the plans called for a secondary suite in any of the Properties.
- b) All of the plans called for a bar area and it is these areas that are the subject of this appeal.
- c) Secondary suites are not permitted in any of the Properties as a result of municipal zoning (Property No. 1 and Property No. 2) and restrictive covenants on title (Property No. 3);

Property No. 1

- d) On initial inspection of Property No. 1, the Safety Officer determined that the property contained a secondary kitchen and that the floor plan of the home indicated that this secondary kitchen could be used as a part of a secondary suite. At the time of the inspection kitchen cabinets were installed and room was left for kitchen appliances, although the required electrical wiring was not installed. As a result deficiencies were noted with the electrical work, in particular that the wiring was not up to the Code requirements for a kitchen area, and the inspection was not passed until the secondary kitchen fixtures were removed from the property.
- e) After passing inspection, the safety officer revisited the home and noted that the secondary kitchen fixtures had been reinstalled. This issue has been dealt with under a separate BCSA Compliance Order with the owners of the home and is not the subject of this appeal.

Property No. 2

- f) On initial inspection of Property No. 2, the safety officer determined that the property contained a secondary kitchen and that the floor plan of the home indicated that this secondary kitchen could be used as part of a secondary suite. At the time of the inspection kitchen cabinets were installed and room was left for kitchen appliances, although the required electrical wiring was not installed. The safety officer also noted that an adjacent ground floor room did not have the receptacle arc-fault protection required in a bedroom. As a result deficiencies were noted with the electrical work, in particular that the wiring in the kitchen area was not up to the Code requirements for a kitchen and that the bedroom area did not have arc-fault protection as required by the Code. The inspection was not passed until the secondary kitchen fixtures were removed from the property and the wiring in the nearby room was brought up to Code.
- g) After passing inspection, the safety officer revisited the home and noted that the secondary kitchen fixtures had been reinstalled. This issue has been dealt with under a separate BCSA Compliance Order with the owners of the home and is not the subject of this appeal.

Property No. 3

- h) On initial inspection of Property No. 3, the safety officer determined that the property was intended to contain a secondary kitchen and that the floor plan of

the home indicated that this secondary kitchen could be used as part of a secondary suite. At the time of the inspection kitchen cabinets were not installed; however plumbing for a kitchen sink had been roughed in. As a result the safety officer noted deficiencies with the electrical work, particularly that the kitchen receptacles were not at the height required by Code, and the inspection was not passed until the electrical receptacles were relocated.

Analysis

The Law

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. In particular, section 0 of the Code states that prospective future growth should be accounted for when installing wiring.

Section 26-722-f of the Code sets out the requirements for branch circuits in bedroom areas and section 26-712-d of the Code sets out the requirements for receptacles in kitchen areas.

In formulating its decisions the Board must, pursuant to the *Safety Standards Act* of British Columbia, consider the maintenance and enhancement of public safety.

Application of Law to the Facts

With the exception of the requirement for receptacle height at Property No 3, the Appellant does not submit that the Code was improperly applied. Rather, the Appellant submits that the electrical safety officers ought not to have applied the requirements for bedroom and kitchen areas to the areas of the home in question due to the fact that the Properties were not permitted to contain secondary suites due to zoning and/or restrictive covenants on title and the fact that the plans for the Properties called for bar areas not kitchens in the disputed portion of the homes. However, like all legislation governing building codes, the purpose behind the Code is to ensure public safety by ensuring that a minimum standard of safety exists wherever electrical works are installed. Accordingly, the Board finds that in order to maintain and enhance public safety the use of a property must be considered when applying the Code. Without considering such use, portions of the Code would be rendered useless. For example, if one did not consider that a room was a bedroom it would be impossible to apply the

correct portion of the Code to such room. Further, the Board finds that safety officers must be permitted to objectively determine the use of a property when applying the Code rather than simply relying on municipal zoning and/or building plans. To do otherwise would be to turn a blind eye to public safety.

Property No. 1

As the Board has found that safety officers may objectively determine the use of a residence when inspecting electrical installations, the question is whether a reasonable safety officer standing in the place of the electrical safety officer would have found the room in question to be a kitchen. While the Appellant has submitted that the cabinetry was for the bar area called for by the plans, the Board finds that the cabinetry installed and particularly the fact that room was clearly left for the installation of kitchen appliances negates this submission. Given that at the time of inspection kitchen cabinetry, which clearly left room for a fridge and stove to be installed, existed in the room in question, the Board finds that the safety officer's decision to require wiring to be done to the Code requirements for a kitchen area is a proper application of the Code.

Property No. 2

As the Board has found that safety officers may objectively determine the use of a residence when inspecting electrical installations, the question is whether a reasonable safety officer standing in the place of the electrical safety officer would have found the rooms in question to be a kitchen and a bedroom. With respect to the alleged kitchen area, given that at the time of inspection kitchen cabinetry, which clearly left room for a fridge and stove to be installed, existed in the room in question, the Board finds that the safety officer's decision to require wiring to be done to the Code requirements for a kitchen area is a proper application of the Code. While the Appellant has submitted that the cabinetry was for the bar area called for by the plans, the Board finds that the cabinetry installed and particularly the fact that room was clearly left for the installation of kitchen appliances negates this submission. With respect to the alleged bedroom area, given the presence of a secondary kitchen in the home, the Board finds the safety officer's decision that the premises could contain a secondary suite reasonable and it is logical that a room with a closet in the secondary suite would be a bedroom. Accordingly, the Board finds that the safety officer's decision to require wiring to be done to the Code requirements for a bedroom area is a proper application of the Code.

Property No. 3

As the Board has found that safety officers may objectively determine the use of a residence when inspecting electrical installations, the question is whether a reasonable safety officer standing in the place of the electrical safety officer would have found the room in question to be a kitchen. The safety officer states that he saw roughed in plumbing for a kitchen sink and that there was no cabinetry installed. Given that at the time of inspection there was no cabinetry in place this property is different from the other two properties. While the property could have cabinetry installed at a later date, the plans did call for a bar area and there was a restrictive covenant registered on title to the property that prohibited secondary suites. Therefore the Board finds that the safety officer erred in his determination that the use of the room in question was a kitchen area. Furthermore, the Board has not been referred to any legislation that sets out a requisite height for kitchen receptacles. Accordingly, the Board finds that the safety officer erred in his application of the Code to the alleged kitchen area. That being said, the BCSA is at liberty to submit legislation governing receptacle requirements for a bar area, should the same exist.

Conclusion

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

1. The intended use of a property must be taken into account when applying the Code;
2. The use of a property as represented to a municipality is not determinative of the intended use of a property for the purposes of applying the Code and safety officers may objectively determine such use upon viewing a property; and
3. The intended use of the Property No. 1 and Property No. 2, when viewed objectively, was to contain a secondary suite. Accordingly the Code was properly applied. The intended use of Property No. 3, when viewed objectively, was to contain a bar area. The Code was not applied properly. However, the BCSA is at liberty to provide the Board with reference to Code requirements for receptacle height in a bar area, should the same exist.

SIGNED:



by the registrar for:

Emily Drown, Vice-Chair