Date Issued: March 30, 2009

Indexed as: BCSSAB 3 (5) 2005

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:

A Gas Contractor

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR FINAL DECISION

Revocation of Class A Certificate of Qualification

Board Members: Pinder K. Cheema, Q.C.
Brian Morgan;
Ted Simmons

Introduction

[1] The Appellant is a gas fitter licensed in conformity with section 23 of the *Safety Standards Act*, SBC 2003, c.39 (the Act) who holds a Class "B" Gas "Contractor Licence with a Class A endorsement thereon". Class "A" and "B" certificates are defined in sections 6 and 7 respectively of the Gas Safety Regulation, BC Reg.103/2004, hereinafter referred to as GSR.

[2] He appeals the decision of the BC Safety Authority (the Respondent) dated November 18, 2005 wherein the provincial safety manager (PSM) revoked the Appellant's Class "A" Certificate of Qualification (C of Q) pursuant to section 15 (a) of the Act, which states:

15 A provincial safety manager may exercise any or all of the powers of a safety officer and may do one or more of the following:

(a) issue, suspend or revoke a certificate of qualification;

[3] The Appellant acting on his own behalf filed a Notice of Appeal (the Appeal) with the Safety Standards Appeal Board (the Board) on November 22, 2005 pursuant to section 51(2) of the Act which provides:

"If a safety manager makes a decision that could otherwise have been made by a safety officer, a person who would have a right to a review under section 49 has instead a right to appeal the decision to the appeal board."

[4] On January 16, 2006, a safety officer (SO) suspended the Appellant's permit pulling privileges pursuant to section 18 (1) of the Act as a result of non-compliance with three certificates of inspection (COI) and the Appellant filed a second appeal to the Board on April 11, 2006, disputing the suspension. This issue was decided on and cited as BCSSAB 3 (3) 2005.

[5] The Appellant then retained counsel who filed an Amended Notice of Appeal dated May 4, 2006 and agreed that the Appellant's two outstanding claims should be consolidated and heard together.

[6] The preliminary issue of whether the PSM had jurisdiction to revoke the Class "A" Certificate was heard on October 12, 2006 via videolink with the Appellant in Prince George and the Board and the Respondent in Victoria, British Columbia.

[7] The Board subsequently decided, in BCSSAB 3 (4) 2005 that the PSM had jurisdiction to revoke a C of Q under section 15(a) of the Act.

[8] The issues yet to be resolved according to the Amended Notice of Appeal are:

" … b. In the alternative, if the PSM had the authority to revoke the Appellant's Class "A" license under Section 15 (1) (a) without the limitations imposed in section 44, the PSM exceeded his jurisdiction by issuing a penalty that was unreasonable and unjustified in the circumstances of the case; and

c. In the further alternative, the evidence of poor performance is insufficient to justify the penalty imposed. The installation referred to in the letter of revocation was not poor. The system was checked when the installation was done and no leaks were found. It is common for leaks to occur after installation and testing is complete. The regulators may have been installed contrary to code but the Appellant installed these regulators based on information he was given by the supplier. In any case, the code violations were not safety matters. Finally, the Appellant did not fail to address the leak in a timely manner. The Appellant had a family emergency before he was told of the leak by the owner. He therefore arranged for another gas fitter to fix the problem immediately. The problem was fixed by the other gas fitter as soon as reasonably possible.

Background

[9] The BC Safety Authority (hereinafter referred to as "BCSA") was created pursuant to the *Safety Authority Act*, SBC 2003, Chapter 38 for the following purposes according to Part 2, Section 5 of that Act:

> "(a). to carry on activities throughout British Columbia that foster safety in the design, manufacture, disposal, construction, installation, operation, maintenance and use of techinical products, equipment, systems and railways".

[10] Section 15 of the *Safety Standards Act* sets out the powers of a PSM:

> "a provincial safety manager may exercise any or all of the powers of a safety officer and may do one or more of the following:
>
> (a). issue, suspend or revoke a certificate of qualification;"

[11] The *Safety Standards Act* seeks to ensure a balance between the rights of the individual performing regulated work to earn a living with the rights of the public to have safety maintained and enhanced. In hearing appeals, the Board, pursuant to Section 52,

> "must consider the maintenance and enhancement of public safety".

[12] The evidence in this appeal was heard on April 10, 11, 12, and 13, 2007, June 22 and 29, 2007, December 3 and 6, 2007 and January 25, 2008. Final submissions were made on August 20, 2008.

[13] At all times[1], the Board sat in Victoria and the Appellant and Respondent appeared via videoconference from Prince George and Vancouver respectively.

[14] The parties filed exhibits, a list of which is appended to this decision as "Schedule 1".

[15] In order to carry out the legislated purposes of the Act to oversee regulated work, the statutory scheme requires that the contractor apply to the BCSA for a permit to perform the regulated work (*Safety Standards Act*, Section 27 and Safety Standards General Regulation, BC Reg. 105/2004 (SSGR), Section 17). On receipt of the permit, and having completed the work, the contractor requests an inspection (GSR, Section 34). The SO then attends the site, views the installation and issues a certificate of inspection (COI) in accordance with section 20 of the SSGR, which reads:

> (1) This section applies to an inspection performed by a safety officer.
>
> (2) On completion of an inspection by a safety officer of regulated work or a regulated product, the safety officer must issue a certificate of inspection to the permit holder.
>
> (3) If the certificate under subsection (2) identifies any non-compliances with respect to the regulated work or regulated product, the permit holder must correct the non-compliances and notify the safety officer that the corrections have been completed.

The purpose of the standardized two page COI, as stated on page1 of this document is:

> "to certify that the gas installation under the permit noted hereon in these premises has been inspected and approved, except as noted hereunder. Pursuant to the Gas Safety Regulation, objections indicated on this notice are to be rectified before *(date)"*.

[16] The SO will record on the COI any non compliances, the section of the legislation with which the contractor must comply, and a date by which the non compliances are to be remedied and forward the COI to the contractor. Once the non-compliance is rectified, the installer must notify the BCSA so they can decide whether reinspection is required.

[17] If the non compliance is not rectified by the date given, the SO has a number of options depending on the severity of the non-compliance. He can extend the date for rectification, or he can, pursuant to section 18 of the Act,

> " (o). issue a compliance order,
>
> (p). issue a variance, or
>
> (q). recommend a monetary penalty".

[18] If the contractor continues to be noncompliant, the PSM may, pursuant to section15 of the Act, choose from a number of sanctions, including a suspension or revocation of a C of Q. The contractor may then appeal that decision to the Appeal Board in accordance with section 51(2) of the Act.

Position of Appellant

[19] The Appellant argues that the Board should reverse the PSM's decision and restore the certificate. Alternatively, he urges the Board to vary the decision and insert reasonable conditions for the return of the certificate including an expiry date for the suspension.

[20] The Appellant urges the Board to not only review the decision of the PSM but also to review all the evidence in its capacity to conduct a trial de novo pursuant to Section 53 of the Act. In reviewing all the evidence as a trial de novo, the Appellant submits that the Board should determine the "most effective solution" and impose it on the Appellant. In addition, the Board should only uphold the PSM's decision if the Board finds that the revocation of the certificate was the "most effective solution" to this particular situation.

[21] The Appellant agrees that competing interests need to be balanced including the interests of the Appellant and most importantly, the maintenance and enhancement of public safety in accordance with section 52 of the Act.

[22] The PSM revoked the Appellant's C of Q in writing on November 18, 2005 based on his past performance, including consideration of the following: a gas leak post installation, issuance of two compliance orders and two suspensions of permit privileges. Reinstatement was contingent on completion of a recognized Class "A" gasfitters course and passing the qualifying examination. It is argued that no explanation was provided for requiring these conditions for reinstatement.

[23] The requirements to obtain a C of Q are set out in Section 26 of the Act. If the individual pays the application fee and then meets the prerequisites, the C of Q is issued, unless the PSM determines that the requirements pursuant to section 2 of the SSGR and sections 5 to 7 of the GSR have not been met.

[24] The Appellant argues that the C of Q functions as a trade certificate to show that the tradesperson can practice his chosen discipline, much like the practicing certificate issued by the Law Society of BC. He also submits that it is a prerequisite to the licence issued under section 25 of the Act which then permits the individual to actively engage in chosen work.

[25] A revocation by the PSM of the prerequisite C of Q means the licencee is precluded from engaging in such work.

[26] The Appellant further argues that the Act and the Regulations are silent regarding both the procedure for the revocation or suspension of a C of Q and the subsequent imposition of conditions to reacquire same. He submits that the lack of such a statutory framework suggests that it is such an extraordinary sanction that the Legislature intended it to be used only in the clearest of cases. As authority for this proposal, he quotes Donald Brown and John Evans in Judicial Review of Administrative Action in Canada that

> "The concept of a government with limited powers has also been understood to mean that grants of authority should be construed so as to interfere as little as possible with the right of individuals."

[27] He submits that where ambiguity exists as to the extent of a regulatory power, it is to be narrowly construed so as to restrict its effect on individual liberties. He likens the effect of revocation of the C of Q to disbarment both in terms of the severity of the penalty and the economic impact on the individual. He submits that the revocation should be imposed only in the clearest of cases where no other remedy will be effective.

[28] The Appellant also argues that section 42 of the Act does not permit the PSM to revoke the C of Q as part of a discipline order. A PSM may only revoke or suspend a licence as part of a discipline order. A C of Q may only be revoked or suspended pursuant to section 15 of the Act. The Appellant urges the Board to conclude that if disciplinary measures are among the most severe which can be imposed, such a draconian order under section 15 should not be used in "ordinary run of the mill cases".

[29] The Appellant argues that the installation at the a particular home was a central factor in the revocation of November 18, 2005. The Appellant installed the gas appliances on September 13, 2005. Two issues arose as a result of this installation – a gas leak and incorrectly vented regulators.

[30] On October 31, 2005 the owner called the BCSA to report a leak as he had not been able to contact the Appellant. The Appellant stated that he had a family emergency which prevented him from attending and so he contacted another contractor, to fix the leak. In his evidence, the other contractor described it as a "minor leak".

[31] The Appellant stated that he did the necessary tests to ensure that no leaks existed in the installation noted in paragraph 29. The Appellant argues that the leak may have developed in late October 2005, shortly before the homeowner called the BCSA, and further, that it was possible that the leak may have been caused by any number of reasons including nothing to do with the installer.

[32] The Appellant argues that the issue here is whether he responded in a timely manner to fix the problems and it is submitted that he did.

[33] The second issue involved the incorrect venting of the regulators. The Appellant stated that he relied on the advice of a trusted supplier in purchasing these particular regulators and that the SO himself had to do some research before determining that the regulators were incorrectly vented. The Appellant concedes that both the gas leak and the incorrectly vented regulators were “potential safety hazards” but not of such a degree to require a revocation of a C of Q, particularly where the Appellant fixed both within a timely period.

[34] In summary, it is submitted that the PSM, in revoking the C of Q, acted in haste and without a full understanding of what had occurred.

[35] The PSM also based his decision to revoke on the two compliance orders issued in May and August, 2005. The Appellant argues that the May 2005 compliance order involved unresolved issues and the August 2005 order involved a difference of opinion. In the case of the May 2005 compliance order the Appellant complied within a day of receiving the order and in the August order he filed an appeal and did the work without incident once the Board rendered its decision.

[36] The PSM also noted that the Appellant had had his permit privileges suspended on September 29, 2005 for 15 outstanding rejections by the SO. By October 7, 2005, all deficiencies were corrected and reinspected. The Appellant submits that much of this work was already done but the paperwork had not been turned in because the Appellant did not believe he was obliged to do so. The Appellant blames his poor record keeping for this suspension.

[37] A second SO suspended permit privileges on November 10, 2005 when the Appellant failed to change an installation at a particular property. By November 15, 2005, the Appellant had forwarded the signed COI and the SO restored his permit privileges on November 18, 2005.

[38] A further reason given for the revocation was the Appellant’s failure to report in writing once deficiencies were corrected. The Appellant argues that section 20 of the SSGR does not require a contractor to give written notification to the SO. Section 20 only requires that SOs issue COIs but there is no requirement that the contractor return this form once deficiencies are corrected. The Appellant submits that only section 34(2) of the GSR requires that the contractor respond in writing, and it does not refer to COIs, but rather to ”notification of completion, installation or alteration forms”. The BCSA argues that the written requirement of this section applies equally to the return of COIs.

[39] In summary, the Appellant argues that the two sections use different language and refer to different forms. There is no requirement that the COI be returned in writing.

[40] The Appellant further submits that, as this is a trial de novo, evidence not considered by the PSM including the two particular installations - can now be considered by the Board in arriving at its decision.

[41] The first installation was commenced in August, 2005 involving a gas appliance at a commercial facility. The SO, on arriving at the site, noted an uncapped gas line. It is submitted that the Appellant did not leave the gas line uncapped. It was located some 20 to 25 feet away from where the Appellant had been working.

[42] When the second SO, arrived on August 18, 2005, he capped the gas line and issued a COI on August 18, 2005 citing a number of deficiencies including failure to obtain a permit.

[43] The Appellant stated in evidence that he did not know what type of permit he needed for the part of the installation already completed. He intended to seek the advice of the BCSA and then secure the permit during the course of the installation. The Appellant submits that, when the first SO arrived, the Appellant was clearly still working on the unit.

[44] The second installation noted in paragraph 40 was a residential installation. The inspection was completed on February 4, 2006. Photographs were provided to the Board to show ongoing renovations and the Appellant submits that it is difficult to know what the site looked like at the time of installation.

[45] The Appellant argues that a negative inference should be drawn against the Respondent as the homeowner was not produced and, as the prejudicial value of the evidence outweighs the probative value, the Board should discount this evidence.

[46] The Respondent relies on two reports by the holder of an “A” certificate in gas fitting and an expert in the subjects of gasfitting, the installation of gas appliances and compliance with codes and regulations relating to those subjects. The Appellant argues that the report can be considered, provided it is relevant and of assistance to the Board, but disputes the primary conclusions arrived at by the report’s author. The Board, in an earlier decision, ruled that the report was admissible but excluded the conclusions.

[47] The Appellant submits that two other aspects of the PSM’s decision should cause the Board some concern. The first issue is the suggestion made to the PSM by the then acting Senior SO that the PSM consider holding a hearing to allow the Appellant to respond to the allegations against him. Indeed, the PSM himself was considering this option as outlined in a draft of a letter dated November 17, 2005. The Appellant submits that the advice of two unnamed colleagues who suggested that the PSM make a stronger response, leads one to conclude that the PSM was governed by someone else within the organization. He submits that the revocation of the C of Q was a result of unnamed individuals who wanted a stronger response from the PSM. The Appellant agrees that while the PSM had the discretion to ignore the advice of others, he should still provide a reasonable explanation for his decision to revoke the C of Q.

[48] The Appellant also submits that the most recent SO with whom the Appellant was dealing (see paragraph 42) was clearly motivated by an animus towards the Appellant and the Board should consider this aspect in assessing the evidence as a whole.

[49] The Appellant submits that the reason provided by the PSM to revoke the “A” C of Q was to get the Appellant’s attention. The Appellant suggests that there existed a number of other options which had clearly gotten the Appellant’s attention in the past and had provoked a timely response from the Appellant. The revocation of the “A” C of Q resulted in the Appellant being able to continue to do the type of work that was considered unsafe and also impacted other work that he was qualified to do. The Appellant argues that revocation was the least effective means of carrying out the objectives of the Act. In revoking the “A” certificate, the PSM actually left the public in greater danger as this permitted the Appellant to continue residential installations under his “B” certificate.

[50] In conclusion, the Appellant submits that the revocation was not the most effective sanction to have been imposed by the PSM. He submits that the Appellant's performance between September 29 and November 18, 2005 did not warrant any additional reprimand.

[51] The Appellant asks that the Board rescind the revocation and restore the "A" C of Q. In the alternative, he asks that, given the Appellant's improved performance since November 18, 2005, the C of Q be returned to the Appellant with "reasonable conditions for the return of the certificate including, but not limited to, an expiry date for the suspension."

Position of Respondent

[52] The Respondent submits that the appropriate method for review of administrative decisions, including cases by way of a hearing de novo, is the "pragmatic and functional approach". In support of this, he cites a number of cases including Imperial Oil Resources Ltd. V. 826167 Alberta Inc. 2007 ABCA 131.

[53] The "pragmatic and functional approach" requires the adjudicator to select and employ the correct level of deference. The Respondent cites The Law Society of New Brunswick v. Ryan (2003 SCC 20, [2003] 1 S.C.R. 247) which states three such standards: correctness, reasonableness and patent unreasonableness. The Respondent submits that, in this case, the correct standard of review is one of reasonableness, even if the reviewer would have decided the issue differently.

[54] The onus is on the Appellant on a balance of probabilities to establish the elements necessary for relief to be granted. In other words, he must prove that the decision was not reasonable and, if he cannot, then this appeal must fail.

[55] In order for a decision to be not reasonable it must "be clearly irrational" or "evidently not in accordance with reason"; however it may be reasonable if it is "supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling." In addition, the Board must consider section 52 of the Act in its analysis. Even if the Board finds that the decision was not reasonable, the appeal must fail unless the Board finds that the relief sought would not negatively impact the maintenance and enhancement of public safety in accordance with section 52. In other words, even if the Board finds the decision of the PSM is unreasonable, the appeal fails unless the Board finds that reversing the decision would have no negative impact on public safety. It is clear that this position grants much deference to the decision of the PSM.

[56] The adjudicator must consider the following:

1. the presence or absence of a privative clause;
2. the expertise of the initial decision maker relative to that of the adjudicator;
3. the purpose of the legislation; and
4. the nature of the question – law, fact or mixed law and fact.

[57] The Respondent argues that the duties of the PSM regarding education, licensing and discipline of tradespeople working within a legislatively regulated industry are highly specialized activities, thereby warranting deference to his decisions.

[58] It is argued that the PSM has greater expertise to assess and impose sanctions than does the adjudicator, again warranting deference to his decision.

[59] The jurisdiction of the Board is outlined in section 52 as the "maintenance and enhancement of public safety." The BCSA's legislated role set out in section 5 of the *Safety Authority Act* is to "carry on activities in BC that foster safety in technical products, equipment systems and railways". This necessarily involves hiring qualified individuals to inspect regulated work and then to administer the licensing and disciplinary processes outlined in the Act. These factors also warrant greater deference to his decision.

[60] As to the issue of mixed law and fact, it is submitted that the decision in question involves assessment and evaluation of issues of Code compliance and compliance with statutory obligations. Hence, a greater degree of deference is again warranted to the PSM.

[61] The Respondent submits that a number of factors need to be considered including the Appellant's history of non compliance and whether the Appellant was given the opportunity to mitigate his situation as well as the context and the purpose of the regulatory scheme in the face of limited resources.

[62] The Respondent argues that the C of Q is a privilege and not a right which may be lost if one ignores obligations associated with its exercise.

[63] The Respondent disagrees that the Board has the same discretion as the PSM and that it can step into the shoes of the PSM and substitute its decision for that of the PSM. As authority for this proposition, the Respondent cites Maple Lodge Farms v. Government of Canada. ([1982] 2 S.C.R. 2)

[64] The Respondent states that the Board's powers are limited, under section 59, to confirming, varying, reversing or dismissing the appeal;

[65] The Respondent disagrees with the Appellant's view that a license permits the tradesperson to work. In the view of the Respondent, a C of Q permits the individual to work and the Appellant has done so under the supervision of another gas fitter.

[66] The Respondent disagrees with the Appellant's position that section 5(2) of the GSR which states:

> 5 (2) A provincial safety manager may set terms and conditions for the renewal or maintenance of any class of certificate of qualification issued under this Division.

In the Respondent's view, this does not permit the imposition of conditions that would be required to reacquire a C of Q after revocation. The Respondent points to that same section as authorizing the PSM to set "terms and conditions for the renewal and maintenance of any class or certificate of qualification issued under his Division". The Respondent argues that this section should be interpreted broadly.

[67] The Respondent also disagrees with the Appellant's characterization that section 15 of the Act powers of the PSM are extraordinary because it does not incorporate the procedural safeguards of section 42 of the Act. In the view of the Respondent, section 15 sets out a restricted toolkit whereas section 42 of the Act provides a discretionary power to fashion disciplinary tools as the PSM sees fit.

[68] The Respondent also disagrees with the Appellant's position that legislated powers should be interpreted as narrowly as possible so that they impinge as little as possible on the rights of individuals. In the view of the Respondent, a privilege can be revoked when one is unwilling or unable to comply with the overriding legal framework. The Board must also consider the maintenance and enhancement of public safety in arriving at its decision.

[69] Alternatively, the Respondent submits that the revocation has had limited economic impact on the Appellant. He was still able to practice his trade performing "B" level work in the same fashion as before the revocation.

[70] The Respondent disagrees that a revocation of an "A" certification is comparable to disbarment. Rather, he says it is similar to a restricted practice.

[71] The Respondent also disagrees with the Appellant's submission that the PSM changed his evidence regarding the installation noted in paragraph 29 as the precipitating or culminating event leading to the "A" C of Q revocation. In cross examination, the PSM stated that the installation was the culmination of events leading to the C of Q revocation.

[72] The Respondent points to the Appellant's conduct over a number of years which required assertive disciplinary action and suggests the only question for the PSM in November 2005 was to determine the next sanction in the event of non compliances.

[73] The Respondent argues that the PSM had a great deal of information on which to base his decision of November 18, 2005. Two of his senior SOs had given him information about a gas leak along with photographs of the installation noted in paragraph 29. He also had information about another gas leak at another residence, including a written statement from the home owner, notes and diagrams created by the SOs and the Appellant's notes on the COI. There is no basis established for the PSM to approach either the letter or the telephone call from the home owner with any disbelief. The PSM had documentation prepared at the initial inspection sufficient for him to determine what had occurred at the house.

[74] The Respondent takes issue with the Appellant's assertion that, in the end, the Appellant remedied his non compliant work. In the matter of Compliance Order No 5, issued on Mary 31, 2005, a COI had been issued but no deficiencies were corrected until six weeks after issue of same. During that time, combustibles were in proximity of a wood wall. The Respondent states that the Appellant ultimately complied due to the threat of discilinary action or imminent threat thereof.

[75] The Respondent states that in the case of Compliance Order No 6, issued on August 3, 2005, the Appellant did not remedy the deficiency until after the Board, having dismissed his appeal, ordered him to do so. This was a contravention of section 54 of the Act which states that an appeal does not operate as a stay.

[76] The Respondent disagrees that the evidence of the SO noted in paragraph 48 should be disregarded as biased and the Respondent points to numerous instances that show that the SO simply wanted the Appellant to comply with the statutory framework.

[77] As to the issue of signing COIs and notices of completion, the Respondent disagrees with the Appellant's position that an oral report from the Appellant's wife should be sufficient to comply with the statutory requirement. The Respondent further states that this reporting was contrary to reminder letters sent out to the Appellant on September 28, October 7, and

November 10, 2005 stating that the permit holder was required to provide written notice to the BCSA immediately on completion of regulated work. The Respondent also disagrees with the Appellant's interpretation of section 34 (1) and (2) of the GSR.

[78] The Respondent suggests that completion of notices pursuant to GSR section 34 (2) is the mechanism by which the permit holder advises the BCSA that regulated work has been completed so that the SO may decide if an inspection is warranted. Given the limited resources of the Respondent it is argued that it cannot possibly employ sufficient SOs to monitor and then inspect each installation. The cost of permit fees would be prohibitive and the legislative scheme would become unwieldy.

[79] The Respondent submits that the Appellant was obligated, at the installation noted in paragraph 41, in accordance with section 54 of the GSR, to fix all aspects of the gas equipment or shut off the gas supply and notify the Respondent. He did neither and the Respondent states that this does not demonstrate an adequate level of performance for an "A" level gas fitter.

[80] Finally, the Respondent takes issue with the Appellant's statement that the PSM was influenced by other people in choosing not to send the November 17, 2005 draft of his letter to the Appellant. He submits that the PSM, on November 15, 2005 was considering a number of options, including having the RCMP lay a charge. Ultimately, having consulted with a number of individuals, the PSM himself made the final decision to revoke the C of Q.

[81] The Respondent also takes issue with the assertion that the revocation of the "A" Certificate preceded an improvement in the Appellant's performance.

[82] The Respondent also addresses a number of other issues including the Appellant's competence, credibility, incremental discipline, professionalism and the failure to comply with statutory obligations all of which underlie the decision to revoke the C of Q.

[83] The Respondent submits that although the SOs may have been mistaken about some of the installations being deficient they did not so state for all. Thus there remain some sixteen installations which were found to be deficient and for which the Appellant had no explanation. The Respondent points to this as an example of the Appellant's lack of competency.

[84] The Senior SO (see paragraph 47) testified that between 2004 and 2005, the Appellant had taken out some 373 permits which resulted in some 94 rejections. This, argues the Respondent, is an intolerable failure rate.

[85] The Respondent also submits that the Appellant is not credible. He points to the audio recordings made surreptitiously by the Appellant of conversations with the Regional Safety Manager (RSM) and the SO (see paragraph 138). When asked, he denied taping the conversations and further, misled the RSM and said that his phone was broken. During the conversation with the RSM, he also denied that he had refused to respond to the SO's question if he had installed a new Code compliant base for the furnace at the home. The Respondent suggests that both the covert taping and the subsequent denials are troubling.

[86] As further evidence of his attempts to mislead, the Respondent points to the COI for the property noted in paragraph 37 signed by the Appellant on November 15, 2005. In fact, the work was not completed for another 6 months as suggested in a letter by an engineering company dated March 16, 2006. (filed in the materials as Exhibit "D").

[87] The Respondent also disagrees that an adverse inference should be drawn from the failure of the Respondent to call the owners of the residence noted in paragraph 44 as witnesses. The Respondent relies on McTavish v. MacGillivray, (2000 BCCA 164) as authority for the Respondent's position that it should not be drawn.

[88] The Respondent submits that the Appellant's evidence is contradicted in a number of areas by his own witnesses. The gas contractor noted in paragraph 30 contradicted the Appellant's assertion that he did not have to take out permits before commencing an installation. The owner of the installation noted in paragragh 41 contradicted him on the issue of whether the gas appliances and gas system at the installation were readily visible.

[89] The Respondent submits that a scheme of incremental discipline was utilized over a significant period of time before arriving at the revocation of the "A" C of Q. He also suggests that in revoking the "A" C of Q and attaching conditions for its reinstatement the PSM considered both the present financial situation of the Appellant and the prospect of the Appellant regaining his "A" C of Q and thereby balanced both the public safety interest and the financial interest of the Appellant.

[90] The Respondent further submits that the public has expectations that an "A" C of Q holder will comply with the Act and conduct himself in a professional manner. He points to the Appellant's lack of professional manner demonstrated by his derogatory attitude to the BCSA, as evidenced in his letters to the BCSA, his email to the Premier in 2001, and his comments written on a number of COIs.

[91] Finally, the Respondent points to the Appellant's history of lack of compliance with both the BCSA and its predecessor, Safety Engineering Services, which reveals a pattern of rectifying non compliant work only when disciplinary steps are taken. This creates a burden for the SOs who must devote limited resources to one particular individual. Public safety also is impacted as general monitoring of other tradespeople will decrease.

[92] In a similar vein, the Respondent refers to the potential impact on the BCSA. If all tradesmen followed the Appellant's practice of completing and then submitting documents all at once.

[93] The Respondent also points to the Appellant's failure to comply with his financial and legal obligations which the Respondent states is inconsistent with public expectations of an "A" C of Q holder.

[94] In summary, the Respondent submits that the approach used by the PSM was measured, careful and reasonable. Hence the appeal must fail.

Analysis and Conclusions

[95] The Board's jurisdiction to hear appeals is prescribed in sections 52 and 53 of the Act which state:

> 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.

53 An appeal is a new hearing unless the appeal board otherwise recommends and the parties to the appeal agree.

Accordingly, the Board can consider evidence presented at the hearing as well as the information which the PSM had when he made his decision to revoke.

The PSM Decision As Reasonable

[96] The Appellant filed his amended Notice of appeal on May 4, 2006. He asks the Board to determine that the PSM exceeded his jurisdiction by issuing a penalty that was unreasonable and unjustified in the circumstances. Alternatively, he argues that the evidence of poor performance was insufficient to justify the penalty imposed.

[97] The letter of November 18, 2005 by the PSM referred to concerns regarding photographs of one of the Appellant's recent installations showing a natural gas leak and incorrectly installed regulators contrary to Code; the Appellant's failure to address the gas leak when advised by the customer; two compliance orders and two permit issuance suspensions. He also warned the Appellant that further non compliances would result in the suspension of his class "B" gas fitters C of Q.

[98] The Board may, pursuant to section 59, confirm, vary, reverse the decision or dismiss the appeal.

[99] In his final submission, the Appellant now contends that the Board has the same discretion that the PSM had when he issued the revocation with conditions, and it should be bound by the same standard – to issue the most effective solution to the situation. He argues that the Board should only uphold the PSM's decision if the Board finds that the reovcation was "the most effective solution" in this particular situation. He provides no authority for this position.

[100] With respect, we disagee with the submission of the Appellant. In our view, based on the law, and the filed Notice of Appeal, our jurisdiction is limited to determining the reasonableness of the PSM's decision.

[101] The first issue for the Board is to determine is the appropriate method of review of the PSM's decision. The standard of review is set out in the decision of Dunsmuir v. New Brunswick 2008 SCC 9. This case sets out the two standards of review - correctness and reasonableness.
The Supreme Court defines the reasonableness standard as follows:

> "Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonablenss: certain questions that come before administrative tribunals do not lend themselves to one specfic, particular result. Instead, they may give rise to a number of possible, reasonable conclusions…in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law."

We agee with the position of the Respondent that when we review the purpose of the Board as stated in section 52 of the Act, the existence of a privative clause in section 60, the nature of the issue before us and the expertise required to assess the issue, reasonableness is the appropriate standard to be utilized.

[102] At each step, we must consider section 52 which provides that "the appeal board must consider the maintenance and enhancement of public safety", and section 53 which reads, "an appeal is a new hearing unless the appeal board otherwise recommends and the parties to the appeal agree". At the end of the analysis, we must, in accordance with section 59, confirm, vary, reverse the decision or dismiss the appeal.

[103] Taking into account sections 52, and 53 of the Act we proceed as follows:

[104] The first stage of our analysis considers if the PSM's decision was reasonable. If we find that the PSM's decision affecting this individual was reasonable, we must then consider section 52 - the impact on public safety. If the PSM's decision affecting this one individual somehow leads to a negative impact on public safety, we must reverse the decision. Where the decision does not negatively impact public safety, we cannot reverse the PSM's decision.

[105] Where however, the Board finds the decision was unreasonable, section 53 requires us to consider the new evidence presented at the hearing. If the new evidence still leads us to the same conclusion, we must then consider section 52 - the impact on public safety. If the unreasonable decision does not negatively impact public safety then we must give deference to the PSM's decision and we cannot reverse the decision. If the unreasonable decision does negatively impact public safety, the Board must reverse the decision.

[106] While the Act seeks to balance the rights of the individual to work with those of the public, public safety must be paramount at all times. To conclude otherwise would ignore the import of section 52.

The PSM's Evidence

[107] The PSM testifed that he had been employed since 1979 in the propane industry. He holds an "A" C of Q and a C of Q as a gas SO with the BCSA. He has worked for the provincial government since 1995 as both a SO and gas inspector.

[108] Prior to making his decision to revoke the Appellant's "A" C of Q, he testified that he took a number of steps. He reviewed the Appellant's files. (We note from the filed materials before us that, by December 2005, the BCSA had compiled 48 files consisting of 1500 pages relating to the Appellant's performance.) He reviewed material from a meeting in 2003 between the then Safety Manager and Executive Director, emails from three SOs and the RSM and the Appellant's "A" Certification. He had also participated in drafting the letter of September 29, 2005 revoking the Appellant's permit privileges for non compliance issues relating to fifteen permits and warning him that failure to comply might bring about further disciplinary action. He reviewed the October 7, 2005 permit privilege reinstatement letter to the Appellant by the BCSA requiring the Appellant to comply with a number of conditions and again warning him that failure to comply might bring about further disciplinary action.

[109] In addition, in November 2005, he viewed photographs of a residential installation by the Appellant depicting a gas leak and gas regulators installed contrary to the Code and reviewed the COI issued as a result of this inspection.

[110] He was aware that the Appellant's permit privileges were again suspended on November 10, 2005 due to non compliance issues.

[111] Between November 14 and November 17, 2005, he consulted with a number of his experienced staff and corporate counsel.

[112] He considered a number of options, including revocation of the certificate, suspension of the certificate or having the RCMP lay a charge against the Appellant.

[113] On November 17, 2005, he drafted a letter to the Appellant warning him to comply. However, after consulting with his staff he decided that a stronger response was required. On November 18, 2005, he sent the letter which revoked the Appellant's "A" Certification. In that letter, he cited the following factors as the basis for his decision:

1. the gas leak and the incorrectly installed regulators at the residence noted in paragraph 29;
2. the two compliance orders issued in 2005; and
3. the two permit issuance suspensions to date.

He also warned the Appellant that further non compliances would result in the suspension of his "B" gas fitter's certificate.

[114] In cross examination the PSM was asked why he chose not to issue a compliance order (as had been done before) or issue another letter similar to September 29, 2005. He responded that "the behavior of the Appellant did not seem to be changing with respect to complying with the non compliance issues and with the requests of the SOs he was dealing with." Having reviewed the evidence considered by the PSM, we concur with this assessment.

[115] We find that his letter of November 18, 2005 to the Appellant revoking his "A" C of Q given his continuing non compliance and poor performance was reasonable in all of the circumstances. This letter balanced the financial interests of the Appellant with the safety concerns of the public and did not negatively impact the maintenance and enhancement of public safety in accordance with section 52 of the Act.

[116] However, as this is a trial de novo, we will review the evidence heard and materials filed at this hearing to determine if the decision is still reasonable and what impact it may have on the "maintenance and enhancement of public safety".

The Chronology

[117] We will set out the background in some considerable detail as it is relevant to our contextual analysis of the issue before us.

[119] The Appellant's history of difficulty with the BCSA is documented as far back as 2001. It resonates with a certain sameness throughout.

[120] The Appellant gave evidence on April10,11 and12, 2007. At the time he was 37 years old and had owned and operated his contracting business for eight years. His wife helped with bookeeping and telephone duties.

[121] He testified that he did some 60% of all new furnace installations in the Prince George area. He completed up to nine installations per day and approximately 300 installations per year. This was his bread and butter. He did not do much service or repair work.

[122] He testified that he had held a Class “A” C of Q for eight years and, prior to that, had held a Class “B” C of Q for some six to eight years. He was unsure of the date when he received his “A ticket”.

[123] To stay abreast of developments he attended regular training programs put on by manufacturers and received updates at least twice per year. He also testifed that he subscribed to the current edition of the Gas Code and ensures that he gets all the updates. He also gets the directives and bulletins from the BCSA on a biweekly basis. He referred to the B149HB-05 Natural Gas and Propane Code Handbook and the CAN/CSA-B149.1-05 Natural Gas and Propane Installation Code as his “Bibles” and stated he reviewed them on a nightly basis.

[124] Most of his work up to April 2007 was “B” ticket work which involved removing and replacing residential furnaces. It took him four years of apprenticeship to get the “B” ticket and then a further two years working at that level before he was eligible to write the “A” exam. He passed the “A” exam on the first attempt.

[125] He testified about the role and importance of the “A” ticket in his career. His rationale for getting the “A” ticket was that he wanted it to keep him going through to retirement. He testified that an “A” ticket has a number of advantages - he could get jobs anywhere in the province, it was very easy to get “A” ticket work, it was very lucrative and did not require so much physical labour but more technical skill. He viewed the “A” work as less physically demanding, particularly as he neared retirement.

[126] The Appellant testifed that he had been referring most of the “A” work to his father who had an “A” ticket. This was because the Appellant was not able to drop everything to do the “A” work. He testifed that if a mill or other institution shut down, the mill required the “A” fitter immediately. This timeframe did not suit the Appellant’s schedule. He stated that he was extremely busy, booking months in advance in winter. He could not drop his regular, scheduled clients to perform “A” ticket work.

[127] As to the requirement to obtain permits before commencing an installation, he admitted in his evidence at page 67 that he had had people from the BCSA explain that requirement to him before.

[128] The Appellant also claimed that the difficulties between himself and the BCSA were exacerbated by incorrect information in records maintained by the BCSA which prevented him from timely reception of mail. In his evidence given on this point on Disc 1, 35, rec 3, page 56, he stated: “Ah well, they had the wrong address on those forms. I don’t live in Prince George ... I went and walked into the Gas Branch to personally ask for it ... was addressed wrong so were getting sporadic documents ... I requested a number of times to get the address changed; it’s like they’re well aware of it but I had to walk into the office to ask for the

documents."

[129] However, we note that in all of the documents filed by the Appellant and the Respondent, including the earliest letter by the Manager Field Operations to the Appellant, dated December 5, 2001, the Appellant's address consistently reads as the Appellant's current address. We also note that, at this hearing, the Appellant did not provide any incorrectly addressed correspondence to support his assertion. We find that his contention that "they had the wrong address" casts doubt on his credibility and we reject his evidence on this point.

[130] We turn to the issue of the Appellant's contention that the SO noted in paragraph 48 bore him some particular animus and that this aspect contributed to the "A" Certificate revocation.

[131] We have reviewed the tenor of the numerous emails sent by the SO over a lengthy period of time to his supervisors outlining his concerns of the Appellant's continuing poor performance.

[132] We have carefully reviewed the SO's evidence in chief and cross examination given on April 12 and 13 and December 3, 2007.

[133] We have also reviewed a DVD and transcript filed by the Appellant (Exhibit 6). The Appellant taped an inspection at the residence noted in paragraph 85, on November 23, 2005, where the Appellant had installed a furnace earlier in the year. His rationale for taping this inspection was to collect evidence in the event of a possible further appeal of this installation. A COI was issued on June 28, 2005 citing the installation as incorrect and the Appellant appealed to the Board. A Compliance Order was also issued.

[134] On November 10, 2005, the Board ordered the Appellant to replace the furnace (indexed as BCSSAB 2 - 2005). He did so and then called for the inspection.

[135] On November 23, 2005, prior to the SO arriving at the site, the Appellant, assisted by his wife, taped himself testing the furnace at the site. His callous, dismissive attitude to the SOs is amply demonstrated in the DVD. While conducting the testing, both the Appellant and his wife refered to the SOs as "idiots" and as "idiot inspectors". He further agreed that "just because they are an inspector, doesn't mean they have a brain."

[136] When the SO arrived the Appellant started to film him without any warning or consent. When asked to shut off the camera and assist with the inspection, he refused. The SO attempted to continue the inspection alone - in spite of the filming. He sought confirmation from the Appellant of two aspects - his test results and whether he had placed a mount under the furnace. The Appellant refused to answer either question. Finally, the homeowner answered the question about the mount. The SO was unable to secure any cooperation from the Appellant and finally left the site.

[137] We find that this conduct could well form the basis for an allegation pursuant to section 72 of the Act which states:

> 72 (1) A person who does any of the following commits an offence:
>
> (b) obstructs a safety officer or safety manager in the exercise of their powers or the performance of their duties,

> (2) for the purposes of subsection (1) (b), a person obstructs a safety officer or safety manager if the person does any of the following:
>
> (a) intentionally hinders or delays the safety officer or safety manager;
>
> (b) fails to comply, as soon as practicable, with any valid request or requirement of the safety officer or safety manager;
>
> (e) fails to answer, without reasonable excuse, an oral or written question that the person is able to answer; and
>
> (f) fails to produce for inspection a record required to be produced by the safety officer or safety manager.

[138] The Appellant then telephoned the SO and did not reveal that he was audio taping the conversation. The conversation is lengthy - some 24 pages of transcript. We have reviewed the transcript, filed as Exhibit 5 (Tab C sub tabs 26 and 27). We note that at no time, either during the video or audio tapings, did the SO ever exhibit any tone of animus towards the Appellant. He stated that he was tired of fighting with the Appellant and simply wanted to work together to complete the installation. He reminded the Appellant that it was his responsibility to furnish the test results showing that the installation was functioning properly. On four separate occasions the SO complimented the Appellant that he had done a “nice job” on the last installation and that he just wanted to finish the reinspection by getting the test results. The Appellant, on the other hand, never acknowledged his statutory responsibility to provide the test results to the SO.

[139] We find that the SO displayed remarkable self control during both the video and audio tapings to which he was subjected. In contrast, the Appellant’s attitude as displayed in the taped proceedings (Exhibit 6) shows a clear disdain for members of the BCSA. We find that in failing to answer the questions about the testing and the mount he displayed not only a complete disregard for his statutory obligations but also a complete lack of concern for the safety of the public. We find that he treated this situation as a private dispute between two parties and paid no heed to the safety of the public and, in particular, that of his client. We find that his attitude and behaviour as demonstrated in these taped incidents cause us to doubt his competence as a qualified gas fitter.

[140] This attitude is further demonstrated in his original filed Notice of Appeal, received on November 28, 2005, wherein he wrote that he did not accept the gas branch representatives as being his superiors, that he would always challenge authority and that he liked to stir the pot and push the envelope. He didn’t conform and had succeeded in business by being different and aggressive. He saw himself as a “maverick” and classified “bureaucrats, managers and anal retentive inspectors” (sic) at the bottom of the population.

[141] The Appellant testified that he attributed much of his difficulty with the BCSA, up to November 2005, to “not knowing the process, procedures and policies, like not signing the documents”. However, we note that the Manager, Field Operations, Gas Safety Program, sent him a letter on December 5, 2001 summarizing a joint meeting held on November 22, 2001 and outlining the BCSA’s concerns, including work performed without permits as per section 53 of the GSR, failure to inform inspectors of work done without permits, failure to post tags as per section 46 of the GSR, failure to provide combustion air for gas appliances as per section 7 of the Gas Code and failure to obtain permits and comply with the regulations. He was also advised that he had to obtain permits in accordance with section 53 of the GSR. He was also reminded of the authority of the SOs to conduct their inspections, issue directions and objections to his work. He was also advised that the SOs would conduct 100% inspections on

all his gas installations. He was also warned that failure to comply could result in suspension or revocation of his licence or registration.

[142] We now turn to a review of the chronology of the Appellant's interaction with the BCSA.

[143] On December 12, 2001 the Appellant's wife sent an e-mail to the Premier entitled "Problems with gas inspectors HELP". In it, she states that they had recently developed a situation of differences with the gas inspectors of Prince George, who did not address their concerns but "sent a nasty letter threating (sic) to pull our licence." The problem as she saw it, was that the Appellant had challenged the SOs who took it personally and began to slander the company and tell lies. She states that "the jobs are not unsafe but we receive rejections for … combustion air to be put in." She believed that the Appellant was "being singled out due to lower prices and the competition complaining about our methods of doing business".

[144] However, little appears to have changed, as on April 3, 2003, the director of the Boiler, Gas and Railway Safety Branch, sent the Appellant a registered letter summarizing a meeting held on February 18, 2008 in Prince George and attended by representatives of the Gas Safety Program, the Appellant and his counsel.

[145] The letter outlined deficiencies in the Appellant's performance as a gas contractor including gas appliances not vented as required by installation instructions, vents plugged with insulation, and improperly terminated valves.

[146] A collective decision was reached to develop a remedial plan, including an inspection cycle consistent with the Branch's internal risk management system. This plan was to be reviewed over a period of six months to see if further steps were necessary. He was again reminded that in his role as a gas contractor, he had an obligation to ensure the safety of the public. Finally, the letter warned him that his license registration might be suspended or revoked if infractions continued or if concerns arose regarding his performance as a gas fitter or contractor.

[147] He continued to be busy. Records filed in this hearing show that between September 8, 2003 and December 17, 2003 (100 days) he applied for and was issued 107 permits for residential installations. Of these, seventeen (20%) resulted in COIs being issued for deficiencies. They were to be corrected within a two or three week timeframe. Of the seventeen, the records show that only two were corrected and the COIs dated, signed and returned within the time allotted. The others remained outstanding for four to eight months. Some remained outstanding until September 2004.

[148] One such installation took place in Mackenzie, BC. The permit was issued on September 11, 2003. The SO conducted his inspection on September 17, 2003 and issued a COI citing a combustion air deficiency. The Appellant had taken combustion air from the garage for the installation. He was advised to reposition the air intake. It was to be remedied by October 17, 2003. He did not comply.

[149] On January 21, 2004, the Appellant faxed his COI to the BCSA with the comments, " … (the Appellant's company) does not have combustion air taken from garage, existing structure is a workshop."

[150] On January 22, 2004, the SO replied, reminding him that "when a vehicle is parked in a garage, it is assumed it is a garage and not a work shop. Combustion air must not be taken

from a garage." It was clear to the SO that the homeowner was utilizing the structure as a garage.

[151] The Appellant responded on January 23, 2004 stating that "you rejected this based on the assumption you saw a vehicle parked in the "garage" as this is the owner's woodworking and storage area, it is a workshop. Assume makes an Ass out of U and me". His comments demonstrate that he failed to grasp elementary principles of design versus use. While it may have been designed as a workshop, which could have supplied combustion air to a furnace, when its use changed the Appellant was obligated to ensure he repositioned the air intake so combustion air for the furnace was supplied from another source.

[152] It also appears to us he failed to understand basic principles of combustion – the car would be started in the garage, thus requiring oxygen from the garage. The furnace would also require oxygen for combustion. A garage of limited size would not be able to supply both requirements. In addition the car would emit carbon monoxide into the garage and taking combustion air for the furnace from the garage could introduce carbon monoxide to the house living quarters and seriously impact the health of the inhabitants. In extreme cases, excessive levels of carbon monoxide could cause death. Deficiencies pertaining to combustion air were noted on 16 of the COIs. This failure to understand the relationship between the use of a structure and its impact on a gas installation casts doubt on his competence.

[153] The evidence is inconclusive as to a resolution. However, the COI remained outstanding until September 3, 2004 when BCSA wrote to the Appellant, reminding him that this was one of fourteen COIs where deficiencies had to be corrected and the signed, dated COIs had yet to be returned to the BCSA. This correspondence demonstrates a chronic lack of attention to correction of deficiencies and resulting disregard for the safety of the homeowner.

[154] One such installation concerned the second residence noted in paragraph 73. The Appellant was issued a permit on December 11, 2003. In his evidence, he stated that in late December 2003 he had installed a condensing furnace at the residence using "gasflex" piping.

[155] On Christmas Eve, 2003, the homeowner called to report a gas leak. By the time the Appellant called back the homeowner had called another contractor to deal with the problem. The Appellant stated that he then went to the residence shortly after Christmas 2003 to test the line and found two more points at which the piping leaked gas. He remedied this problem.

[156] The SO conducted the inspection on February 2, 2004 and issued a COI citing deficiencies including lack of combustion air to the furnace, the necessity to install a combustion air duct into the house, the gas leak and the fact that the Appellant was not qualified to perform the depressurization test. He was advised to refer to the installation requirements. He was to correct the deficiencies by February 16, 2004. He did not comply.

[157] Sometime after February 16, 2004, the Appellant called the BCSA to state that the gas leak was not caused by faulty workmanship but rather because of a separation of the gasflex line, but his memory of what else he may have discussed is sketchy at best. There is no evidence he advised the BCSA either that he had found a second leak in the line or that he had left the gasflex piping installed in the home. He believed that he may have discussed something about the air requirements to the structure.

[158] The Appellant is uncertain as to when he eventually created a direct vent system which allowed air to be piped directly from the outside to the furnace. He failed to return the COI.

[159] On October 1, 2005, in order to have his permit privileges reinstated, he signed and dated the COI. He also wrote on it the following comments: “What qualifications does the inspector have to judge humans … If the inspection body is not capable of peforming the test then they cannot comments (sic) on testing.”

[160] In our view, both the initial installation deficiencies and the subsequent lack of attention to follow up are troubling. We also have concerns that there is no evidence that, given the Appellant’s knowledge of the propensity of the gasflex piping to develop leaks, he took any steps whatsoever to alert the homeowner to monitor the situation for a further leak. We find this a basic omission and we conclude that he failed to advise them because he himself failed to recognize the ongoing risk to the homeowner.

[166] On December 15, 2003, the Appellant was issued a permit to install a gas furnace at another residence.

[167] The SO inspected this installation and issued a COI on January 7, 2004 citing a vent that was sloped incorrectly and blockage of the combustion air source. The Appellant was to correct the deficiencies by January 21, 2004. He failed to comply.

[168] The Appellant on his returned COI argued that the vent had been installed the correct way and that “no such pipe will be installed”; he directed the SO to “read the manufacturer’s instructions”. On January 22, 2004, the SO responded to him about five COIs that had been issued including one for this installation. The SO stated that the unit was not installed in accordance with the manufacturer’s instructions and he pointed out the relevant page number in the installer’s guide.

[169] By September 2004, the issue was still unresolved and on September 3, 2004 the homeowner called the BCSA. An email dated September 3, 2004, filed in this hearing, details the homeowner’s concerns that the Appellant had told the homeowner that it was too cold to do the work and had not come back since the issuance of the COI. The homeowner had paid the Appellant in full and now wanted to be able to use the furnace but was concerned about carbon monoxide and insurance and liability issues.

[170] Shortly after the September 3, 2004 email, the BCSA developed both a short term and a long term plan to deal with the Appellant’s ongoing compliance issues. The short term plan included reinspecting the installation noted in paragraph 166 and either passing it or issuing a further compliance period; the longer term plan included steps to be taken to have the Appellant comply and the development of the step by step process necessary to achieve this objective. (The Appellant returned to the residence sometime in January or February 2005 for a service call on the unit but not to correct the deficiencies. They remained uncorrected until after September 29, 2005 when he corrected them as a condition of the reinstatement of his permit privileges.)

[171] On September 3, 2004, a letter was sent to the Appellant by the Provincial Gas Safety Manager. It followed an earlier letter of August 27, 2004 and was entitled “Notice of Failure to correct deficiencies”. The Appellant was advised that fourteen COIs with deficiencies needed correcting and was given until September 24, 2004 to comply. Failure to do so would result in notification to his bonding company and commencement of the procedure to recall the bond to correct the deficient installations. By now, some had been outstanding for almost eleven months.

[172] By September 21, 2004, the Appellant still had nine permits outstanding which had deficiencies and required reinspection. On October 21, 2004, the Provincial Gas Safety Manager wrote to the Appellant again about the outstanding permits, including the second installation noted in paragraph 73 and advised him that he had to comply by October 29, 2004.

[173] On October 24, 2004, the BCSA held a meeting to discuss how to resolve the problems they were experiencing with the Appellant and emphasized the necessity of maintaining paperwork regarding the Appellant and the importance of following up on COIs within fourteen to thirty days.

[174] On October 27, 2004, the Provincial Gas Safety Manager sent a fax to the Appellant regarding the necessity of attending at both the second residence noted in paragraph 73 and the residence noted in paragraph 166 to resolve the deficiencies. In particular, regarding the former installation, he was advised of the potential risk of a joint which could create gas leaks and the homeowner's concerns about this issue. He was advised to attend to this matter immediately and advise the PSM once it was done.

[175] By November 3, 2004, the two installations (among others) were being held against the Appellant's bond, prompting a fax from the Appellant to the BCSA to resolve outstanding matters.

[176] Another of the installations being held against the Appellant's bond concerned a boiler installation at a locksmiths in Prince George. The permit was issued on June 8, 2004. The Appellant testified that he installed it in Spring 2004. On the right hand side of it, he installed a gyproc like board made out of cement "a few inches" away from the side casing of the boiler.

[177] The SO issued a COI on June 21, 2004 which stated that the board edge was 1¾ inches away from the edge of the boiler and that six inches clearance to combustibles was required. The Appellant was to remedy the deficiency by July 21, 2004. The Appellant testified that he remedied the deficiency within a week or two of receiving the COI. However, he did not sign and date and return the COI as required.

[178] In May 2005, the owner of the locksmiths sent a letter to the BCSA complaining about serious problems with a boiler installed by the Appellant in January 2004, including a gas leak and carbon monoxide emissions causing her plants in her shop to turn yellow. She could not use the boiler regularly and could not vary its temperature. She was unable to convince the Appellant to rectify the problem and so she contacted another contractor who told her that the boiler was not installed in accordance with the manufacturer's specifications.

[179] The Appellant stated in evidence that he did not hear from the owner of the locksmiths until the spring of 2005 when she wanted him "to do some work for free". However, we find that his evidence is at odds with the Appellant's document filed at Tab 24.17. This is a letter from the Appellant's wife, on his behalf, to the SO dated September 9, 2004, which states, "I would like to set up a time for the Appellant and yourself to meet at the locksmiths to discuss the situation at that site. I do not want my customer to worry or have to worry about her boiler".

[180] On November 3, 2004, the Appellant sent a fax to the BCSA stating that the permit issue regarding the installation at the locksmiths was "rectified by (the Appellant)". From these two documents, we conclude that there was indeed an issue with the boiler, that the Appellant had been made aware of the concerns by September 2004, and that the Appellant did not

remedy the problem until November, 2004. We also conclude that he did not adequately remedy the problem which in turn prompted the owner of the locksmiths to send the complaint letter of May 2005. We further conclude that he did not attend to resolve the client's ongoing boiler concerns in May 2005.

[181] This attitude of constant lack of attention to client concerns imposes further costs on the BCSA and increases the risk to the homeowner when exposed to continued unsafe installations.

[182] BCSA internal correspondence dated November 25, 2004 indicates that they were issuing new COIs to the Appellant for deficiencies noted on recent installations.

[183] In response, on December 6, 2004, the BCSA developed a further draft plan regarding the Appellant which included consideration of issuing non compliance orders in the event of a threat to persons or property, bond recall if installations were unsafe and a hearing with the contractor or an application to the Court under section 39 of the Act to enforce compliance of the safety order or the compliance order.

[184] The Appellant's performance did not improve in 2005. He continued to be busy – he was issued 193 permits in 2005.

[185] At Tab 58, the Respondent filed a table of the 193 permits taken out by the Appellant in 2005. Of these, the SOs visited 206 sites of which 56 resulted in deficiencies being noted or approximately one in three. Ninety-eight sites were inspected more than once requiring a total of 329 inspections. The deficiencies ranged from incorrectly installed venting to improper clearance to combustibles.

[186] The Appellant continued to fail to obtain permits in advance of installation. On January 31, 2005, the Appellant invoiced a construction company $4801.00 (including $48.00 permit fees) for the installation of a furnace and air conditioning unit for the construction company.

[187] On February 2, 2005, the Appellant's wife, on behalf of the Appellant, wrote to the construction company requesting a cheque for payment and that the permit will "be mailed along with original receipt". No permit had been obtained. It was not obtained until February 5, 2005. On February 28, 2005 the SO inspected the installation and noted that the air conditioning was not connected. It did not appear to be resolved until April 19, 2005.

[188] The Appellant continued to perform at a substandard level, leading to further COIs with deficiencies. In Spring 2005, he installed a furnace at a residence. The SO issued a COI on June 3, 2005 citing lack of proper clearance to combustibles. The date for rectification was June 17, 2005.

[189] The Appellant's disregard for the BCSA is evidenced in his comments written on the COI: "corrective action taken: none. Excess mud and spackling trimmed to show (easily) fire stop that was already present and visible. 6 hour repair fee to follow"

[190] He did not sign and return the COI until Oct 15, 2005 when it made a condition of reinstatment of his permit privileges.

[191] The Appellant was issued a permit for a residence on January 26, 2005. The date of installation is unknown. The SO issued a COI on June 6, 2005 citing lack of combustion air to the furnace. It was to be rectified by June 20, 2005. Within one week of the COI the Appellant stated that he rectified the problem, however he failed to sign and date and return his COI as proof of same. Three site inspections were required.

[192] The Appellant was issued a permit for a residence on February 6, 2005. The date of installation is unknown. The SO issued a COI citing lack of proper combustion air and venting requirements. It was to be rectified by June 22, 2005. The Appellant testified that he rectified the issue but he failed to sign, date and return his COI as proof of same. Four site inspections were required.

[193] On February 22, 2005, the Appellant was issued a permit to install a furnace at a residence. This was a mobile home. In addition to the furnace he installed a gas line from the exterior meter and a new chimney on top of the furnace which he direct vented on top of the roof. It was a complete furnace installation using the existing ductwork. To install the gas line, he used a piping called “GasFlex”.

[194] The COI issued on May 9, 2005 by SO Mondor noted two deficiencies and directed the Appellant to:

1. “install a shut off valve upstream of the furnace gas valve, and
2. “secure the gas meter by installing a swing joint (rigid pipe) to prevent it from being buffeted about by the wind.”

The rectification date was on or before May 30, 2005. He did not comply.

[195] Another inspection was conducted by the SO on May 30, 2005, indicating the following concerns:

1. installation does not meet the meet manufactures installation specifications. Either relocate flexible gas line or provide protection from mechanical damage, (the gas line ran along the outside of the mobile home),
2. shut off valve shall be installed as close as possible to the valve train of the appliance, and
3. provide a proper swing joint or riser support to protect meter set from damage.

The document also included the following remarks: “Natural Gas service shall be interrupted until the above mentioned issues have been resolved. The present installation is considered a safety hazard”. The rectification date was June 10, 2005. He did not comply.

[196] A third inspection by the SO was conducted on June 10, 2005 and the third COI delineated the same two concerns as May 9th, but included the following comments:

> “GC (gas contractor) has returned and piped in a swing joint. He failed to completely cover the exposed flexible gas line. Ony 20 ft of the 40 ft is encased in plastic pipe. This 20 ft looks good. Shut off valve is still required at the furnace (I did not get in to inspect). A reinspection fee to follow and go into the Compliance Order. “

The new rectification date given was June 24, 2005.

[197] On June 14, 2005, with the expiry of the second COI, the BCSA was considering the option of a Compliance Order.

[198] By June 15, 2005 the Appellant had rectified all of the above concerns noted in the three inspection certificates, dated and signed the second certificate and returned the second one to the BCSA. In fact, the form bears the stamp of the BCSA, dated June 15, 2005. We conclude that gas service was then restored to the residence. A total of five inspections were required.

[199] We have a number of concerns arising from this installation. The evidence shows that in 2003 the Appellant had used gas flex piping in the installation noted in paragraph 73. In 2003, the piping had developed a crack in the material underneath the plastic resulting in a gas leak inside the tubing. Another installer who fixed that problem later gave the Appellant the damaged tubing. It was marked as Exhibit 7 in this hearing.

[200] We conclude that the Appellant knew this piping was subject to problems as long ago as 2003 but used it again at the installation noted in paragraph 193 in spite of its limitations. In addition, he failed to take the necessary precautions to protect the piping. In his evidence, he justifiied using it again because the BCSA did not expressly forbid him from using it after the gas leak at the second installation noted in paragraph 73.

[201] Further, when issued a COI, he failed to resolve the problem in the required time, and then only covered one half of the piping leaving the rest still exposed. After repeated COIs and having been advised that it was a safety hazard, and with the threat of a gas service shut off to the client looming and the issuance of a Compliance Order against him, he ultimately complied.

[202] We are also troubled by his failure to install a shutoff valve. The purpose of the shut off valve is to allow for repair without shutting off other appliances attached to the same gas system and to act as a safety device, in that if a gas fitter, while working on the appliance, requires the gas to be shut off on an urgent basis, the shut off valve performs this function.

[203] The Appellant was issued a permit to install a furnace at a residence on March 6, 2005. The SO issued a COI on June 30, 2005 citing lack of proper clearance to combustibles. It was to be rectified by July 14, 2005.

[204] A water heater had been installed by another contractor. The COI issued to the Appellant notes that he was the last licensed contractor on the site.

[205] In his evidence, the Appellant stated that the rejection was based on the water heater exhaust installed too closely to combustibles. He stated that the water heater contractor should have received the COI and been required to remedy the deficiency. His returned COI of October 15, 2005, views the matter differently. He writes:

> "AS PER COMMAND, clearances to combustibles provided in the following manner:
>
> 1. wood cut away from exhaust vent on furnace and water heater,
> 2. 26 guage metal shield placed against exhaust vent on furnace and water heater,
> 3. fibreglass insulation placed between shield and wood on furnace and water heater."

He went on to state that it would have "been observed that the water heater was installed by Mainline. Clearances on water heater are not the responsibliity of Char. A 6 hour repair fee to follow."

[206] We find as a fact that he knowingly left the site in an unsafe fashion contrary to Section 54 of the GSR, which reads:

> 54 (1) A person who finds any appliance or gas equipment beyond repair or in an unsafe condition must
>
> (a) place the appliance or gas equipment out of service, and
>
> (b) promptly notify a safety officer of its condition and location.
>
> (2) If the initial notification under subsection (1) (b) is verbal, it must be promptly confirmed by a written statement setting out the facts.

He did not return the COI until October 15, 2005 as this was a condition of the reinstatement of his permit privileges. Three site inspections were required.

[207] On March 16, 2005, the Appellant was issued a permit to install a furnace at the Levia residence. An inspection on April 22, 2005 resulted in deficiencies which included the furnace vent up against the wood wall and the lack of a proper base for the furnace. He was given until May 5, 2005 to comply. He did not comply.

[208] A Compliance Order, pursuant to section 38 of the Act, was issued on May 31, 2005. The Order noted that the vent off the furnace might cause a fire unless the installation were rectified.

[209] He ultimately complied after June 16, 2005, necessitating six site inspections.

[210] On June 2, 2005 the Appellant was issued a permit to install a furnace at a residence. Another contractor had already installed a water heater and had placed a metal shield on the water heater exhaust which was doubled up on top of the exhaust. The SO issued a COI on July 6, 2005 for ”improper venting”. It was to be rectified by July 20, 2005.

[211] When notified, the Appellant argued with the SO but then agreed to resolve the problem by replacing the double thickness metal shield with a single sheet of metal. However, he did not comply with the requirement to sign and return the COI until October 15, 2005 as this was also a condition of the return of his permit privileges.

[212] The Appellant testified that he believed he installed a furnace at a residence in Winter 2004 or Spring 2005. Records show that the permit was issued on June 2, 2005. The SO issued a COI on July 8, 2005 which cited failure to provide a suitable location for the furnace vent. He had vented it under the homeowner’s deck. His evidence was that he vented it under the deck because the manufacturer and the Code specified that such a location was fine but that he and the SO subsequently “worked out a solution.” Three site inspections were required.

[213] On June 10, 2005, the PSM printed the Appellant’s COI history from September 8, 2003 to May 11, 2005. The records showed that the Appellant had been issued 23 COIs in 2003, of which he had corrected thirteen. He had been issued sixteen COIs in 2004 of which he had corrected fourteen. By May 11, 2005, he had been issued eight COIs and he had corrected one.

[214] On June 2, 2005, the Appellant was issued a permit to install a furnace at a mobile home. Following an inspection on June 28, 2005, a COI was issued as the furnace installed was not approved for installation in a mobile home. The SO noted that the installation was a

safety issue, “red tagged” it and locked off the furnace to prevent its operation. The Appellant was to rectify the deficiency by July 15, 2005. He did not comply.

[215] On June 30, 2005, the Appellant faxed the BCSA stating that this furnace “shall not be required to be certified specifically for use within a mobile home.” The Appellant sent a second fax requesting confirmation that the unit was locked off and demanding information from the manufacturer.

[216] On August 5, 2005, the BCSA issued a Compliance Order pursuant to section 38 of the Act to the Apppellant requiring that an approved furnace be installed before “03/17/05 (sic); it was signed and dated by the SO and sent via registered mail to the Appellant.

[217] On August 17, 2005, the registered mail envelope containing the Compliance Order was returned to the BCSA marked “refused”. The SO issued another copy with a compliance date of August 31, 2005 and hand delivered the second copy on August 17, 2005. Again, the Appellant did not comply by the specified date.

[218] The Compliance Order stated clearly that the Appellant had 30 days from date of the order to request a review of the Order by appealing to the Board. Again, he failed to comply. Eventually, the Appellant filed an appeal to the SSAB. It was heard in October, 2005 and he was ordered to install an approved furnace.

[219] Matters continued to deteriorate. The number of COIs accumulated and the BCSA spent more time monitoring the Appellant’s performance.

[220] On August 18, 2005, the Appellant, frustrated by the amount of time required to repair and reinspect, issued an account to the BCSA for $86,670.00 for “hourly fee for consulting/managerial babysitter to gas inspectors re misinterpretation of Code and followup by Char Heating the Appellant’s company’s rep to customers who were misrepresented by false rejections and eroneous (sic) comments by government staff; $100/hr x 5 hours per rejection = $500.00 x number of rejections (162)”.

[221] In August 2005, the owner of the first installation noted in paragraph 41 required an “A” fitter to peform gas and water hookups to two units. In his evidence, the owner described the gas line structure as follows: the main gas line coming into his building from the gas meter was a 3 inch line. Once inside the equipment room, at least six ‘reduced’ or smaller lines linked into the 3 inch line. The smaller gas lines then fed specific, individual pieces of equipment. The main line and the smaller lines were all in the open, in plain view to the observer.

[222] The owner was unable to contact his regular “A” fitter and so called the Appellant. He testified that he told the Appellant on arrival that he needed to get an installation permit as none had yet been obtained. He also testified that it was not a lengthy job but it took the Appellant a week to do the job. He had to call the Appellant every day to get him to come back and complete the job as they were in a hurry to start the business.

[223] The Appellant testified that the first unit (an industrial bake oven) was already sitting in place with the chimney hooked up to it and the second unit (a parts washer) was ready to go into place. In evidence, he described them as “two used units out of the States”. He worked on the bake oven, hooking up the 2.5 feet of gas lines and then reconnected the water lines and installed about 25 to 40 feet of water lines to it.

[224] According to his evidence, it took him a week to get the bake oven connections done, as he fitted it around his other jobs. Over a four to five day period, he went to the site every day but never saw an open, uncapped gas line within twenty feet of the bake oven to which he had connected gas and water. The owner of the installation testified that the gas line was out in the open, in plain view.

[225] The Appellant testified that he called the SO to come to the job site because he did not know which permit to obtain to do the job. When the SO came to the site and looked at the job, the unit was fired and the SO told him to let it run but not to do any more work until the SO determined what to do about the permits and that he would get back to him about the permits. The Appellant stated that he went back to the site at a later point "just to check up on (the owner) to see how it was going". On arrival at the site the owner told him that the SO was still there. The Appellant testified that he stayed for two hours and "hung out" with the SO. The gas line had already been capped off by this time.

[226] We do not accept the Appellant's evidence as to the sequence nor his version of the events. It is not corroborated by the owner of the installation and given the difficulty that the owner had experienced in getting the Appellant to do the job followed by having to hire someone else to finish the installation, we find that it belies common sense that the Appellant would stay for two hours and "hang out" with the SO given his self described heavy schedule.

[227] The SO had the same gas fitter qualifications as the Appellant. He testified that, on August 17, 2005, he received a call from the Appellant to attend the site of the first installation noted in paragraph 41. Shortly thereafter, he attended at the site and noted a number of contraventions of the Code: no permit had been obtained for the installation, the appliance was already installed and had been fired up, the appliance did not bear evidence of approval for installation in Canada (it had no seal of approval) and an uncapped gas line was in plain view. In addition, since no permit had been applied for, the SO had no idea what work the Appellant had already done.

[228] We conclude that the Appellant was not at the site when the SO attended as the SO called the Appellant regarding his concerns immediately after attending the site. On returning to the office, the SO alerted the SO in whose jurisdiction the site was located, so he could properly deal with the issue.

[229] The SO email of August 18, 2005 records that he went to the site at about 9:30 on August 18, 2005 and met with the owner. The owner told him that the Appellant had been working on the site for about two weeks. The owner showed the SO the bake oven and the other equipment that was to be installed.The SO noted that the equipment was about 20 feet away in plain sight of the location of the open gas line. The valve was closed but the piping was not capped. The SO opened the valve to verify if the line was under pressure. It was. He then permitted the owner to put a cap on the line in the event of accidental opening of the valve and he "red tagged" the appliance, signaling that it was not to be used. The Appellant was not at the site.

[230] The SO issued a COI on August 18, 2005 and cited deficiencies, including open gas lines left uncapped, a gas leak on that same line, the lack of a permit, the lack of Canadian certification, and the lack of approval to fire this unit.

[231] The Appellant testified that when he received the COI rejecting the installation he told his wife just to “pull anything – any permit that could be relevant to the job”. His application for a permit was dated August 19, 2005.

[232] A number of concerns arise from this commercial installation. The first issue is the lack of a permit. The Appellant, who understood that he was called to the site expressly because of his “A” fitter qualifications, did not know which permit to obtain and failed to research the issue in advance of attending the site. On receiving the COI, he instructed his wife (who had no qualifications in this area whatsoever) to apply for a permit, telling her to “apply for any permit that could be relevant to the job.” This is roughly equivalent to a lawyer acting on a litigation file, asking a secretary to draft a writ, any writ, and file it without any further instructions.

[233] As to why the Appellant had not applied for a permit in advance, he stated that he was permitted a “reasonable time to pull permits”; however, the SO stated it was necessary to get permits in advance of any installation absent an emergency; this view is supported by the installation owner as well. In addition, the Appellant had been told in person and in writing of this requirement on a number of occasions. In our view, his failure to research in advance the permit issue for an unfamiliar installation is troubling and not saved by his perception that he had a “reasonable time to pull permits”.

[234] We are also concerned by the manner in which the Appellant approached this commercial installation. He testified that it was not within his area of expertise and he did not perform many of these “A” ticket installations. He attended the site without a permit, did not know which permit to request and commenced installing the appliance. He did not get approval to fire the appliance and did not even realize he needed such approval. In fact, his practice some eight years earlier had been to start up appliances without approval. He failed to note that the appliance did not bear evidence of approval for installation in Canada.

[235] We do not accept that the Appellant attended at the site on three or four occasions and never noted the uncapped gas line some twenty feet away from where he was working. His evidence in chief was that he never saw it when he was there and he did not know what happened twenty or fifty feet away. In his view, one could only see it if one were looking right at it.

[236] We are very troubled by the fact that an experienced gas fitter, who possessed both an “A” and “B” ticket, did not, on entering an unfamiliar work site for the first time, familiarize himself with the main gas line location and all other lines leading from it and conduct at least a peripheral, visual examination on each subsequent visit. This would permit him to identify any pre-existing concerns, unusual characteristics or special conditions so as to ensure that his subsequent installation was in conformity with the existing structure. He gave no evidence on having any such practice to promote either a safe worksite or a safe installation. We find that the lack of such casts doubt on his competence and that it compromises public safety.

[237] We find that these actions are inconsistent with the Appellant’s avowed familiarity with the CAN/CSA-B149.1-05 Natural Gas and Propane Installation Code and the B149HB-05 Natural Gas and Propane Code Handbook which he stated that he consulted on a nightly basis.

[238] By August 19, 2005, the Appellant had seven COIs and one Compliance Order outstanding. Deficiencies ranged from venting problems to lack of combustion air. In one instance he had not used sheet metal screws to secure the metal vent.

[239] On August 24, 2005, three SOs, wrote to the Manager, Head Office, reiterating their concerns about the Appellant's ongoing poor performance, his reluctance to correct the deficiencies in the allotted timeframe, his refusal to correct the deficiencies without following the correct procedures, the accumulation of rejections, and recommended that his licence be suspended. Their views were supported by the Regional Manager.

[240] On September 29, 2005, the Gas Safety Manager suspended the Appellant's permit privileges pursuant to section 18 (a) of the Act. His reasons included twelve outstanding permits which involved non compliance issues. The Appellant was advised to correct all deficiencies and then notify the SO by signing, dating and returning the COI by October 31, 2005.

[241] On September 30, 2005, the Appellant met with the SO to negotiate the reinstatement of his privileges. He was not successful and was warned to not start any new installations until all deficiencies were rectified. The Appellant responded that "they better not pay attention to what he was doing." The Appellant then called the SO again to renegotiate the reinstatement of his privileges and was told to fix all outstanding matters. The Appellant's response, as recorded in the SO's notes was that it was now apparent that they could not have a working relationship anymore.

[242] On October 7, 2005, the SO, satisfied that the Appellant had remedied the outstanding deficiencies, reinstated the Appellant's permit privileges. However, he attached conditions including correction of all non compliances within the given date, the COIs to be signed, dated and returned, and Notices of Completion to be completed for each permit and that all communication be conducted in a respectful and businesslike manner. He was also warned that failure to comply could lead to further action.

[243] By October 31, 2005, the Appellant's account was sixty days overdue for payment of fees of $282.48.

[244] On October 19, 2005, a COI was issued for the furnace installation noted in paragraph 37 citing deficiencies for incorrect wiring and incorrect permit. He was given until November 2, 2005 to comply. He did not comply.

[245] On November 2 or 3, 2005, the SO called the Appellant's wife to remind her about the deadline. On November 3, 2005, the Appellant's wife called the SO and left a message stating that the work was done - she would fax him the completed COI and would obtain the correct permit online that night.

[246] On Friday, November 4, 2005, the SO telephoned the Appellant's wife again to inquire about the COI and the permit. She assured him that she would get it done that weekend.

[247] The SO waited until November 10, 2005, and then suspended the Appellant's permit privileges citing the failure to forward the COI documentation for the installation noted in paragraph 37 and the failure to follow the conditions set forth in the October 7, 2005 letter of reinstatement.

[248] On November 15, 2005, the Appellant signed and sent in the completed COI and on November 18, 2005, his permit privileges were restored. Again he was warned in writing that his reinstatement was dependent on his future compliance within stated deadlines, returned

COIs to be signed and dated signifying compliance and Notification of Completion forms to be submitted as required for each permit.

[249] The Appellant testified that he installed a gas furnace at the residence noted in paragraph 29 in the Summer or Fall of 2005. He was uncertain as to the date. Once again, he did not apply for a permit before he began the furnace installation. The furnace photgraphs in evidence at Appellant's document 10.9 show an installation date of September 13, 2005. He invoiced the client on September 21, 2005.

[250] Sometime thereafter, the Appellant was advised by his wife that the client had noted a gas leak. The Appellant testified that he planned to repair the leak at the same time as he installed the customer's new gas range. There is no evidence that he ever attended to view or assess the severity of the gas leak prior to making this decision.

[251] The Appellant stated that he then saw the customer at the supplier's, that the customer was wondering whether a permit had been issued and the Appellant told him there was one "for sure". Subsequently, the customer went into the local BCSA office and "it just turned into a disaster", according to the testimony of the Appellant.

[252] We infer from the Appellant's comment that the Appellant knew that the BCSA had become aware at least of the installation and had scheduled an inspection for the following Tuesday, November 1, 2005.

[253] On Thursday, October 27, 2005, the Appellant applied for a permit, and, as his mother was now ill, he contacted another "B" gas fitter to attend to the repair of the gas leak.

[254] The other gas fitter, a "B" class gas fitter of forty years experience, testified that within three days of speaking to the Appellant he went to the customer's residence to perform the repairs. He arrived on November 1, 2005 to fix the gas leak. In his evidence, he stated that he did not see evidence of equipment failure. He spoke to the homeowner who said that he had tried himself to fix the gas leak. The witness described the gas leak as minor as he noted small bubbles when he conducted the soap test. However, he stated that he could not smell the gas until he was actually in the joist area where the leak was located.

[255] The SO was also present and he took photographs of the installation and issued a COI citing a number of deficiencies, including the existence of the gas leak. The SO noted on the COI that the homeowner told him that the leak had existed since the date of installation and that the homeowner had tried without success to have the Appellant attend to fix the leak. The homeowner did not give evidence.

[256] The SO required the Appellant to rectify the deficiencies by November 15, 2005. The Appellant stated that he did not receive the COI until a few weeks after the inspection which prevented him from immediately fixing the deficiencies. The delay was caused by the need to correspond by mail as the Appellant's fax was either shut off or busy.

[257] The deficiencies included using a brass bushing rather than a steel bushing. In addition, the Appellant installed regulators which he had purchased based on the advice of a supplier. The Appellant says that no literature came with the regulators and so he simply vented them inside the home.

[258] When the PSM saw the photographs of the gas leak and the regulators he believed that the regulators were incorrectly vented. This information was passed to the SO who researched the issue, confirmed it and then gave the Appellant the literature illustrating the correct method of installation. The Appellant ultimately corrected this deficiency.

[259] We have a number of concerns about this installation.

[260] The PSM, in his evidence, stated that choosing the right regulators was part of basic gas fitting practices. The syllabus for the qualifying Class “B” gas fitters exam, filed by the Appellant, includes regulators as a subject of examination.

[261] In our view, it belies common sense that an experienced gas fitter, installing a new type of regulator which regulates the amount of gas coming into an appliance, would not research in advance an essential element of the installation - how the regulator was to be vented to deal with gas pressure. Failure to vent properly could result in risk to the homeowner.

[262] Our further concern is that although the Appellant had no idea of the size of the gas leak, he unilateraly decided to delay repairs for his own convenience. This attitude put the homeowner in a position of increased risk. We note that the other gas fitter acted with due dispatch in dealing with the problem.

[263] The Appellant also submits that “gas leaks are common”. If this were the case, the Appellant should have taken steps to alert his customer to this fact so that the homeowner could have monitored the situation. The Appellant gave no evidence of having any such practice and thereby further increased the risk to the homeowner.

[264] The PSM, a qualified gas fitter since 1978, stated in his evidence that gas leaks will only develop after installation if there is equipment failure. Where the fitter has performed the installation correctly, then tested for leaks immediately thereafter, a leak should not develop. He has never had a subsequent leak develop in his own practice. He views the ability to ensure no gas leaks develop as a basic gas fitting practice. We note that the gas fitter mentioned in paragraph 253, having repaired the leak, did not see any evidence of equipment failure. We conclude that the leak was due to the manner of installation.

[265] In addition, three inspections were necessary because the Appellant did not get the work done promptly causing an additional expenditure of time and expense to all concerned.

[266] On November 22, 2005, the Regional Manager sent a letter to the Appellant advising that he had outstanding invoices of $659.12 of which $282.48 was more than sixty days overdue. Fees had been imposed for work done without a permit, reinspection where deficiencies had not been corrected and no COI was returned to the BCSA and for deficiencies not corrected but for which a COI was signed and returned.

[267] The Appellant was warned that if he failed to pay by December 21, 2005 his permit issuance privileges could be at risk. On November 30, 2005 he was issued a further invoice of $470.80 for the failure to procure a permit for the first installation noted in paragraph 41. On December 19, 2005, the Appellant paid his outstanding invoices.

[268] By December 28, 2005, the BCSA’s files on the Appellant tallied almost 1500 pages.

[269] Matters did not improve in 2006.

[270] An email of January 3, 2006 sent by the then acting Senior SO outlined the BCSA's concerns regarding the Appellant's continued lack of compliance, the disregard for the BCSA, his disrespectful attitude, his propensity to leave unsafe work conditions and his self described "mavericks approach".

[271] On January 13, 2006, Char Heating installed a furnace at a residence in Prince George. On February 3, 2006, the SO conducted an inspection and determined that the permit had been granted to a different installer. On February 3, 2006, the Appellant's wife wrote to the BCSA acknowledging that the Appellant did not seek a permit prior to installation of the furnace. She explained that she was unable to obtain a permit as the Appellant's permit privileges had again been suspended on January 16, 2006. In our view, this does not explain adequately why the permit application did not precede the date of installation.

[272] On January 31, 2006, in order to reinstate his permit privileges, a further meeting was held at the offices of the BCSA between the Appellant, members of the BCSA, and a member of the MLA's office. It lasted from 1:30 p.m. until 2:55 p.m.

[273] By this time, the BCSA had accumulated four binders of materials documenting the Appellant's performance - this exceeded any other contractor in the province and he was classifed as a "high risk" contractor. Since the first suspension of his permit privileges his installations had been subject to 100% inspection.

[274] The stated purpose of the meeting was to ensure that the Appellant was aware of his responsibility as a licensed contractor and certified gas fitter under the Act and regulations. Nineteen items were discussed relating to the obligations and responsibilites of a licensed contractor, including what it meant to pull permits in a timely manner - he suggested that permits be pulled every week to accommodate his schedule. The Appellant's wife blamed herself for not pulling permits regularly.

[275] The Appellant was reminded that, if a deficiency was noted, the Act required him to fix it even if he wished to appeal it. It was explained to him that he was obligated either to fix the deficiency or to fix it and then seek a review within the thirty day period. Simply leaving the homeowner at risk was not an option.

[276] It was explained to him that he was obligated to provide test results to the SOs after installation and, further, that it was his responsibility to ensure that he had all necessary instruction manuals and appropriate approvals before starting a job - he could not rely on the BCSA to advise him how to complete the installation. The BCSA had 1200 fitters with 2000 contractors and only 25 SOs.

[277] It was explained to him that his installations had to comply with the Act and the regulations or they were unsafe installations. He was given examples of lack of clearances and gas leaks and advised that it was his responsibility to shut off the system and to inform the homeowner regarding the deficiencies. He could not simply leave it. He was told that any changes to the Code were on the BCSA's website - it was his responsibility to educate himself by reviewing it and the bulletins and directives.

[278] It was suggested to the Appellant that he submit an acceptable business plan identifying measures to move from a high risk to compliant contractor. The goal was to reduce his deficiency rate from the current one in three to one in ten.

[279] By February 2, 2006, he had accumulated another eleven COIs which had identified deficiencies.

[280] On February 7, 2006, the Appellant submitted his business plan. It was found to be unacceptable - information was missing and the Appellant had not signed the plan.

[281] On February 10, 2006, the PSM sent out another letter to the Appellant detailing three non rectified COI deficiencies which posed safety hazards for the three homeowners. The date for compliance was February 20, 2006, or the BCSA would consider accessing his gas safety surety bond. The deficiencies included lack of combustion air and clearance to combustibles.

[282] Shortly after February 7, 2006, the Appellant submitted his second business plan. In it, he stated that he would … "share my vast intellectual knowledge with the world in general to protect the little guy from rampant ignorance and corruption of an organization that should be protecting all stakeholders and not just the bureaucracy that they are part of in the guise of public protection."

[283] He also stated that he would "follow industry standard testing procedures contrary to the inspector" and would "always be recording conversations and videotaping installs to verify compliance with standard testing, also following up with customers when the inspector is biased or ignorant in both policy and procedure to bring the inspector up to intellectual and mental equality with (the Appellant) and other like minded contractors as the inspectors have limited business and installation success, the interests of the parties will be further advance (sic) thru (sic) continued diligence on my part and hopefully give business the control they deserve against aggression and repressive practice from policy hacks that only value control over respect and the pursuit of knowledge."

[282] This plan was also rejected.

[283] On February 21, 2006, he submitted his third business plan. He agreed to comply with timely completion and submission of documents, timely pulling of permits and to leave installations in a safe state. On the same date, he also faxed 124 separate Notifications of Completion to the BCSA. Some were for installations completed months previously.

[284] On February 22, 2006, the Senior SO, reviewed and rejected the Appellant's third business plan and continued the suspension of permit privileges. The Senior SO's letter required the Appellant to demonstrate that all non compliance issues had been successfully completed, that he acquire a greater knowledge of installation of gas equipment and systems and a better attitude which would enhance public safety. He was also advised what constituted a reasonable rate of compliance.

[285] By February 23, 2006, he had been charged $500.00 in reinspection fees where no permit been obtained.

[286] On February 24, 2006, the SO inspected a furnace installation and issued a COI. He noted ten deficiencies, including lack of combustion air, lack of the proper base for the furnace, wiring that did not conform to Code (he used an extension cord), lack of proper clearance to combustibles, wrong duct size, wrong configuration of the furnace and air conditioning unit. He was advised to read the manufacturer's installation instructions. The SO noted that there was "not much in the way of workmanship on this job".

[287] By March 2, 2006, the Appellant was assessed a further $250.00 in reinspection fees.

[288] On March 7, 2006, BCSA records showed that he was facing another compliance order, and now owed fees of $750.00 for five reinspection fees, and two miscellaneous inspections.

[289] By March 23, 2006, BCSA records showed that he had 49 active permits of which eighteen or 30% had been rejected, mostly for combustion air issues. Two SOs suggested accessing his surety bond to ensure compliance in a timely manner.

[290] On May 9, 2006, the Appellant completed another residential gas installation and terminated the exhaust outside such that it would eventually rot the deck. This manner of installation was contrary to the manufacturer's instructions and contrary to advice he had been given by the SOs in the past. As the Appellant still did not have permit privileges he had completed the work under another contractor's licence. One of the SOs suggested suspending the Appellant's gas fitter's "B" licence for thirty days.

[291] On May 24, 2006, the Appellant completed an installation in Prince George. He did not apply for a permit until June 5, 2006 under another contractor's name. The SO caught the Appellant while he was in the middle of the installation and noted that the invoice had been issued by the Appellant's company rather than the contractor to whom the permit had been issued. In the view of the SO it was business as usual for the Appelant except now he did not have to worry about his company obtaining permits or receiving COIs.

[292] The SO suggested a monetary penalty.

[293] The filed materials also disclose that on June 8, 2006, the SO became aware of a gas leak in Chetwynd, where the Appellant did work in a housing complex. All gas leaks occurred in an area of furnace installations completed by the Appellant. The SO suggested suspending the Appellant's "B" license. By now, the Appellant's file comprised 2,000 pages.

[294] On June 30, 2006, the Appellant had outstanding fees of $1140.30 - some were overdue by ninety days. He paid on July 7, 2006.

[295] On August 1, 2006, the SO noted that, since the Appellant had been working with another contractor, the Appellant's work quality had improved.

[296] The SO, in his evidence, stated that the Appellant's performance had improved in 2007.

Conclusion

[297] We find that the BCSA made multiple attempts to accommodate the Appellant and his lack of technology, the fact that he worked alone, could only pull permits on certain days – such that they created numerous, particular plans just for him. However, he completely frustrated their efforts by initially agreeing to the proposed measures and then failing to follow through with the mutual proposals.

[298] We find that it was completely beyond the scope of the BCSA's mandate and resources to provide ongoing, specialized, remedial assistance to one particular contractor over an expansive period of time.

[299] We find further that, when viewed individually, the majority of the deficiencies noted in the COIs are not particularly striking; however, when reviewed in the context of the chronology they demonstrate a definite, particular pattern of conduct, consistent with a very busy contractor, who worked alone, was booked up well in advance and who, in order to complete his punishing schedule of installations, had to streamline his installations and create economies.

[300] The Appellant argues that he remedied the deficiencies but this does not explain why he had a deficiency rate of between 20 and 30 percent. There was no evidence that any of these were unusual, unique installations. They were all residential installations (except the first installation noted in paragraph 41) and most deficiencies involved piping, venting and clearance to combustibles issues. Four involved gas leaks as disclosed in the Appellant's filed materials: the second residence noted in paragraph 73 (2003), Pine (2004), the installation noted in paragraph 29 (2005) and Chetwynd (2006). Given his level of qualifications consisting of both "A" and "B" Certificates, the large number of installations performed over a number of years requiring a certain practice and experience for seamless installation, we conclude the high rate of deficiencies can only be attributed to the necessity to create economies in order to maintain a punishing schedule.

[301] We also conclude that the necessitating of repeated inspections and issuance of COI's containing deficiencies, the Appellant's inaction and his delays in resolving deficiencies were due to the Appellant's failure to give due import to the fact that he was working within a regulated industry which required not inconsiderable diligence in researching and then performing his work.

[302] He further appeared not to understand that there is good reason why gas installations are thus regulated. Simply put, if gas installations are incorrectly performed, there is a risk of severe personal injury including loss of life and serious property damage.

[303] Given the Appellant's continuing high rate of deficiencies over a protracted period of time, the chronic failure to obtain permits before commencing installations, the ongoing failure to correct deficiencies within the timeframes allotted, the failure to pay fees when due, the failure to comply with the numerous remedial plans, the failure to adhere to the conditions in the various warning letters sent over a period of years, the failure to return the signed, dated COIs signifying compliance thereby necessitating multiple inspections of the same site requiring such time that, by the end of 2005, the Appellant's files totaled 2,000 pages, we find that the cumulative impact of his performance renders the PSM's decision to revoke the "A" Certificate was reasonable. To conclude otherwise would negatively impact public safety.

[304] We find that the above factors are compounded by the Appellant's lack of judgment and due diligence in failing to conduct adequate research regarding selection of regulators or permits and his inablility to get along with the SO which led to conflicts resulting in risk to the homeowner's safety.

[305] As this is a trial de novo, the Board has considered the totality of the chronology, set out above, in assessing whether the PSM's decision to revoke was reasonable. Given all the concerns noted above, the Board finds that the chronology lends further weight to the PSM's

decision to revoke the “A” C of Q. In addition, the Board finds that if the PSM’s decision to revoke were reversed or varied, it would have a negative impact on public safety.

[306] In arriving at this conclusion we have reviewed the evidence heard at the hearing on April 10, 11, 12, and 13, 2007, June 22 and 29, 2007, December 3 and 6, 2007 and January 25, 2008 and the parties’ filed materials appended herewith as Schedule 1.

[307] The appeal is dismissed.

Schedule 1 - Exhibits - Appeal No. SSAB 3/5

Exhibit	Description
A	12 page fax (filed by Appellant on Apr. 11/07)
D	Cover page of fax dated March 16/6 from engineering firm to Appellant. (filed by Appellant on Nov. 30/07)
E	Memo by BCSA employee dated Feb 21/6 (see Appellant Document 5-061)
1	"Gas Product Approval" Document 3.46 (see last page of Exhibit "A")
2	Doc 3.34 COI dated 2005/05/09 (included in [Respondent] expert report) Exhibit # 12
3	Four photos (included in Exhibit "A")
4	Respondent's Book at TAB "C" (Documents 1 to 81 inclusive)
5	Appellant's Book at TAB "C" (Sub tabs 1 to 31 inclusive)
6	Appellant's DVD (Video taken by Appellant)
7	Gas-Flex piping (consistent with type used at Baubach).
8	Two pieces of internal stainless steel (from residence at paragraph 154 ; small and large piece)
9	Label on cement board at locksmith's
10	Colour photo (Respondent's binder, Tab 60; photo marked as 60.1)
11	Tab "F" (R) Sub Tab 1 (Expert Report, dated October 23/05)
12	Tab "F" (R) Sub Tab 2 (Expert Report dated April 28/06)
13	Tab "43 (R) (Photos 1 to 19 [Respondent])
14	First page of drawing in Exhibit "D"
15	3 page fax from A Kask Respondent's counsel re Remedial Plan (filed by Respondent on July 03/7)
16	Doc 1.26 in Exhibit "A"
17	Doc 1.28 in Exhibit "A"
18	Appellant Document 5-037 Letter: SO to Appellant. dated Jan 16/6 (filed by Appellant on Jan. 24/8)
19	Appellant Document 5-114 RSM email to PSM not dated (filed by Appellant on Jan 24/8)
20	Appellant Document 5-115 Copies of gas Notification of Completion (filed by Appellant on Jan. 24/8)
21	Appellant Document 5-042 Feb 7/6 fax: Char to PSM; SSO; RSM (filed by Appellant on Jan 24/8)
22	Draft Agreed Statement of Facts (filed by Appellant on Jan. 24/8)

Footnotes:

1. (Paragraph 13): On December 3, 2007 B.Morgan attended the hearing session from Prince George via video-link.

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