

Date Issued: December 31, 2019
Appeal No. SSAB 15-2019

Indexed as: BCSSAB 15 (2) 2019

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

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

BETWEEN:

A Homeowner

APPELLANT

AND:

Technical Safety BC

RESPONDENT

REASONS FOR DECISION

Safety Standards Appeal Board:

Jeffrey Hand

Representing the Appellant:

The Appellant

Technical Safety BC:

Lisa Picotte-Li

Facts

[1] The Appellant resides at a property located in Vernon, BC which is located on lands belonging to the Okanagan Indian Band. (the "Property")

[2] The Appellant's primary residence is located on the Property.

[3] The Appellant is a red seal carpenter. He constructed the home in which he resides. He is not a qualified electrician.

[4] In or about May 2019 the Appellant purchased, or was given, two mobile homes and had them moved to the Property with the intention of having his adult children live in each of the mobile homes.

[5] On May 21, 2019 the Appellant applied for an electrical permit to provide electrical service to these mobile homes.

[6] As part of that application process he filled out what is known as a Homeowner's Application Questionnaire which asked the following questions and for which the Appellant provided the following answers:

-are you the registered owner of the property? No (he may have answered 'yes' in a different questionnaire)

-are you performing the work? Yes

-is the premises a fully detached single-family dwelling on the property? Yes

-is the property managed by strata council? No

-Will anyone assist you with the work? No

[7] On May 31, 2019 electrical permit EL 855-066-2019 (the "Permit") was issued allowing the Appellant to install a 200 amp service to the mobile homes as a homeowner. The Permit allows the work to be done subject to its Terms and Conditions.

[8] On June 4, 2019 a Safety Officer attended at the Property and spoke with the Appellant. He expressed concerns about the condition of the mobile homes and whether they had the necessary certification from the manufacturer regarding their electrical wiring. Such certification is typically evidenced by affixing a seal to the home bearing a CSA number. Apparently, one of the homes had a seal but the other may not have had a seal. In any event, The Safety Officer had concerns about the overall condition of the homes and suggested they may require inspection by a qualified contractor.

[9] The Safety Officer also says that he came to learn that the Appellant did not reside in either of the mobile homes and that these were to be occupied by the Appellant's adult children.

[10] The Safety Officer notes of that inspection indicate that he considered allowing the Permit to remain in place had he not had concerns about the certification of the mobile homes.

[11] The Safety Officer advised the Appellant that he would be cancelling the Permit, which he did later that day.

[12] On June 7, 2019 the Appellant asked for a Safety Manager's review of the decision to revoke the Permit.

[13] On July 10, 2019 the Safety Manager issued a decision stating that the Permit was properly cancelled because it had been issued in error. (the "Decision") The Decision offers little if any explanation as to what the error was beyond a reference to the definition of fully detached dwelling found in the Electrical Safety Regulation, which says that a fully detached dwelling is one that is occupied by the owner as a permanent residence. The Safety Manger also noted that there were multiple buildings on the Property and she questioned the source of the power to the mobile homes.

[14] On July 2019, the Appellant filed this appeal from the Decision.

[15] The Appellant says that the Permit should not have been cancelled. He says he is entitled to perform the work at the mobile homes because the Terms and Conditions of the electrical permit allow him to do so. Those terms state:

This electrical installation permit is issued only for the permit holder's own fully detached dwelling.

The dwelling must be, or intended to be, the permanent residence of the permit holder and may not contain a suite.

If approved by a safety officer, this permit may also be used for electrical work on an outbuilding located on the same property as the permit holder's primary residence or on a recreational property.

The premises must be for the sole use of the permit holder (and immediate family)

No electrical work may be performed if the premises is, or intended to be, to provide income.

[16] The Appellant submits that according to the Terms and Conditions of the Permit, he is authorized to perform electrical work at any dwelling located on his property, including out outbuildings, provided they are for the use of his immediate family.

[17] The Respondent submits that the Permit was issued in error and that the Safety Manager was entitled to revoke it pursuant to section 32 of the *Safety Standards General Regulation. B.C. Reg. 105/2004*.

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

[19] Counsel for the Respondent filed a preliminary application seeking to dismiss the appeal on the basis of section of Section 32 of the *Safety Standards General Regulation* which provides that if the permit was issued in error, the decision to revoke it could not be the subject of an appeal to this Board.

[20] On August 29, 2019 I delivered written reasons on the Respondent's application to dismiss. I held that such jurisdictional arguments should be restricted to appeals where there is clear evidence of an error and /or when the error itself is not in issue. Here, of course, the Appellant submitted that there was no error and he raised a prima facia issue regarding the correct interpretation of the Terms and Conditions under which the Permit was issued. I found that to deny him the opportunity to argue this appeal would be improper since if he was correct, there would be no error and section 32 would not come into play. I dismissed the Respondent's application and allowed the appeal to

proceed and be considered on its merits.

Issues

- 1) Is the Appellant a Homeowner for the purposes of the legislation?
- 2) Was the Appellant entitled to a Homeowner's permit in the circumstances of this case?
- 3) Did the Permit allow regulated work to be performed by the Appellant on the mobile homes on the Property?
- 4) Did the Safety Officer revoke the permit because it was issued in error?

Analysis

[21] The following legislation is applicable to this appeal:

Safety Standards Act SBC 2003 Chapter 39 (the "Act")

Sec 18(1)(a) - a safety officer when issuing a permit may include terms and conditions

Section 27(1) if required under this Act a person must obtain a permission to undertake regulated work

Section 27(3) a permission issued under subsection (1) is subject to terms and conditions provided for under the regulations or attached to the permission by a safety manager or safety officer

Electrical Safety Regulation B.C. Reg. 100/2004 ('ESR')

Section 2 Definitions

"fully detached dwelling" means a building with one dwelling unit including mobile homes

"homeowner" means the owner of a fully detached dwelling who lives in that dwelling as their permanent residence

Section 17(1)

a homeowner may perform electrical work in their fully detached dwelling under an installation permit

17(4) work performed by homeowner must be inspected by a safety officer

Safety Standards General Regulation (“Regulation”)

17(1) An installation permit is required to install a regulated product

Section 32 (1)

A permission may be revoked or suspended by a provincial safety officer if the permission was issued in error,

32(2) a decision to revoke a permission cannot be the subject matter of an appeal to the Appeal Board.

Is the Appellant a homeowner?

[22] The Respondent submits that the Appellant is not a homeowner because he does not hold title to the Property, although he does reside there. The Appellant says that because the Property is located on lands belonging to the Okanagan Indian Band he cannot hold legal title to the Property. Typically, persons in the position of the Appellant would hold a license to occupy the property they reside upon.

[23] The applicable legislation on this issue is the ESR since it provides for homeowners to perform regulated work and it provides the definition of homeowner. The Respondent suggests that the definition of “owner” found in the Act, which includes a lessee, must mean that ‘homeowners’ under the ESR cannot include a lessee. I do not find that assertion persuasive.

[24] It is apparent that the applicable legislation and the terms and conditions attached to the permit do not take into account the circumstances of persons residing on reserve lands who cannot own property in the normal sense. Neither do the

questions set out in the homeowner's application necessarily fit with persons who have a license to occupy land but not necessarily legal ownership.

[25] I find that the Appellant is effectively an "owner" of the Property, or at least as close to being an owner as is possible. He has sufficient control over the Property to constitute being a homeowner, at least for the purposes of the applicable legislation.

[26] I also note that there is an absence of any evidence from the individual who issued the Permit to the Appellant indicating they were in any way confused or mistaken as to the Appellant's legal status vis-à-vis the Property. Neither is there any evidence that the Safety Officer or the Safety Manager gave any consideration to this issue before revoking the Permit.

Did the Permit authorize the Appellant to perform regulated work on the mobile homes?

[27] The thrust of the Respondent's argument is that the Appellant does not reside in the mobile homes and thus he cannot perform regulated work in the mobile homes because section 17 of the ESR says that homeowners can only perform work in their own dwelling.

[28] But this assertion ignores the effect of the Terms and Conditions that formed part of the Permit issued to the Appellant.

[29] Section 18 of the Act clearly authorizes a safety officer, when issuing a permit, to include terms and conditions and that is precisely what happened in this instance. Accordingly, those terms are authorized by the *Act* and form part of the Permit as issued. Indeed the Safety Officer's affidavit says that the purpose of the terms and conditions is "to clarify" and to "provide additional requirements for homeowners".

[30] Turning to those Terms and Conditions paragraph four provides:

(1) the permit is for the permit holder's own dwelling and used a permanent

residence

- (2) allows for work to be performed on outbuildings found on the same property
- (3) the premises must be for the sole use of the permit holder (and immediate family)
- (4) the premises is not to be used for income

[31] I note that the third and fourth requirements refer to “premises” while the two earlier provisions refer to “dwelling” and “property”. If the requirement for use being solely for the permit holder and immediate family was to confine that term to the Appellant’s dwelling, it could have said so. It also could have referred property. But it introduced instead a third term being, “premises”.

[32] **The Cambridge English dictionary defines premises a:**

“the land and buildings owned by someone”

Merriam-Webster dictionary says:

“a building or the area of land the buildings are on”

Further still, the **Online Dictionary defines premises as:**

“a tract of land including its buildings together with its grounds and other appurtenances”

[33] It is the premises that are to be used by the Appellant and his immediate family. The evidence discloses that this is in fact the case. I find that the Terms and Conditions authorize the permit holder to perform work not only in their own dwelling but on other buildings, provided they are located on the same property, which are used by the permit holder and immediate family, and not for income purposes. There is no evidence that the premises are being used earn income.

[34] Reading all these provisions together I find that the Permit authorized the Appellant to perform regulated work on the mobile homes located on his Property and used by his immediate family.

Was the permit issued in error such that it could be revoked?

[35] The Respondent's assertions that the permit was issued in error is not supported by the evidence. According to the affidavit of the Safety Manager, the Appellant disclosed that the work would be performed on two mobile homes occupied by his children. She states at paragraph 4 of her affidavit dated November 7, 2019:

"The Appellant applied for a permit on May 21, 2019 to perform regulated electrical work in Vernon.

The Appellant advised Technical Safety BC employees that he was adding two mobile homes to his property, that the homes were for his children, and that he did not intend to live in the homes"

[36] The permit was issued following this disclosure of information. There is no evidence before me from the individual who issued the permit stating that he or she misunderstood the Appellant circumstances or otherwise felt that they had committed an error in issuing the permit. Neither is there any evidence of any misrepresentation having been made by the Appellant. He fully disclosed who would be living in the mobile homes.

[37] As set out above, the Appellant is effectively an owner of the Property and whether he answered the question on the homeowners questionnaire "yes" or "no" in respect of his ownership does not seem to have played any role in the issuance of the permit. There is no evidence from the person who issued the permit, from the Safety Officer or from the Safety Manager that they misunderstood the Appellant's legal entitlement to occupy his home.

[38] There is also inconsistent and conflicting evidence regarding precisely what error was the basis for the revocation of the Permit.

[39] The Safety Officer cancelled the permit out of concern for the condition of the mobile homes and that but for that condition he likely would have allowed the Permit to

remain in place. The condition of mobile homes is not a valid reason to cancel the homeowners permit. If there were concerns about the certification of the mobile homes the Safety Officer could require those concerns be addressed without cancelling the Permit or as part of the inspection that the Safety Officer was required to complete according to section 17(4) of the ESR.

[40] The Safety Manager purported to revoke the permit because of the presence of multiple dwellings on the site and out of concern that the source of the power to mobile homes was improper. Both of these concerns as it turns out were incorrect. Beyond that she provided little explanation of what error she was relying on when she upheld the decision of the Safety Officer to cancel the Permit.

[41] Finally, counsel for the Respondent now submits a third explanation for the error by suggesting that the Appellant was not a Homeowner. But neither the Safety Officer or the Safety Manager placed any reliance on this basis for revoking permit and, as I have already found, the Appellant is a homeowner for the purposes of obtaining a homeowner permit.

[42] If the Terms and Conditions were not intended to apply as I have found, then those terms should be amended to remove any ambiguity and to clarify precisely the circumstances in which they apply and where they don't.

Does the issuance of this permit create undue safety concerns?

[43] Lastly, I must deal with the submissions of the Respondent to the effect that allowing the Appellant to perform this work creates a risk to safety not already contemplated by the legislation.

[44] The legislation allows for unqualified homeowners to perform some types of regulated work and as submitted by counsel for the Respondent, this potentially creates safety hazards for the public. I agree. However, by allowing homeowners to perform this work, this suggests this is an acceptable risk already contemplated by the

legislation and one which is presumably ameliorated by the fact that section 17 of the ESR requires all such work performed by homeowners to be inspected by a Safety Officer.

[45] The Respondent's suggestion that allowing the Appellant to do work on the mobile homes his children reside in creates an expanded risk is, in my view, unfounded. It is no more than the risk that already exists under the legislation. That is, unqualified homeowners may perform work in their own dwellings; ones in which an owner and their family could reside. Or they may do work in outbuildings on their properties occupied by themselves and their family and not used for rental income. There is no new class of "renters" that are somehow left unprotected as suggested in the Respondent's submissions.

[46] Accordingly, I find that the Permit was properly issued to the Appellant and should not have been revoked. It was not issued in error.

[47] The Appellant is entitled to have the Permit reinstated and to proceed with the work, subject of course, to him completing it in accordance with applicable codes and subject to the mandatory inspection set out in section 17(4).

A handwritten signature in black ink, appearing to be 'J. M. P.', written in a cursive style.