

Indexed as: BCSSAB 46 (1) 2021

**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:**

**The Appellant**

**APPELLANT**

**AND:**

**British Columbia Safety Authority**

**RESPONDENT**

**REASONS FOR DECISION**

**INTRODUCTION**

[1] This appeal concerns the Appellant's request that he be permitted to write the examination for Trade Certification Field Safety Representative Class B. ("FSR") The provincial Safety Manager did not allow the Appellant to write the FSR examination because the Appellant had not held a training credential for a minimum of one year prior to his request to write the examination. The Appellant says that the governing legislation does not require that he hold a training credential for a minimum one year. He says he has met all of the requirements to receive an FSR qualification, save and except, the writing of the examination and he asks the Board to overturn the Safety Manager's decision denying him the opportunity to write the FSR examination. The Respondent submits that the Safety Manager has the power to impose requirements on those wishing to write the examination and they asked the appeal be dismissed

**FACTS**

[2] The Appellant is a construction electrician. He obtained a certificate of trade qualification on November 18, 2020.

[3] On May 15, 2021, the Appellant successfully completed a course in the application of electrical codes and standards offered by Trade View Electrical Education. Following this he applied to the Safety Manger to take Technical Safety BC's Class B FSR qualifying examination. The exam was to be administered on June 7, 2021.

[4] On June 1, 2021, the Safety Manager rejected the Appellant's request because the Appellant had not held his trade qualification for at least one year. This one year requirement was chosen by the Safety Manager as a pre-requisite for those applicants that wish to write the examination for the FSR qualification.

[5] Technical Safety BC's website contains a summary of the Safety Manager's requirements for writing the FSR examination as follows:

a) must hold one of the following:

Canadian interprovincial qualification (Red Seal) in the trade of electrician  
BC trade qualification electrical work or  
BC exemption permit and the tradable act Christian

b) must have a minimum one year (1800 hrs.) relevant, acceptable electrical work experience under the Canadian Electrical Code, after receiving a certificate of qualification in the trade of electrician and

c) must have proof of completion of a recognized electrical course in the application of electrical codes and standards from a recognized training provider or instructor completed within three years of application date

[6] The Respondent has provided an affidavit from electrical Senior Safety Officer, Gordon Durocher. Mr. Durocher says that once an individual obtains the industry trade credential, such as the Appellant held in this instance, they are permitted to perform unsupervised regulated work. He goes on to say that a Class B FSR is, in addition, authorized to inspect regulated work performed by others. He says that the rationale for requiring one year work experience as a certified electrician prior to being eligible to write the examination for a Class B FSR is to allow time for that certified electrician to gain work experience before inspecting the work of others.

[7] The Appellant submits that the legislative scheme, and in particular section 8 of the ESR has established three criteria for being granted an FSR qualification. He says that the Safety

Manager has added a fourth requirement, being a minimum one year of electrical work experience. The Respondent urges the Board to find that reading the legislative as a whole, that the safety manager has discretion to add to these requirements by reason of the powers given to the safety manager to “assess” an applicant’s qualifications. The Appellant on the other hand says the legislation does not list work experience and therefore the Safety Manager lacks the jurisdiction to alter these requirements.

## **ISSUE**

[8] I must determine whether the Appellant met the requirements to write the qualifying examination for his qualification as a Class B electrical Field Safety Representative.

[9] The powers of the Board are set out in section 59 of the Safety Standards Act. The Board may either confirm, vary, or set aside the Safety Manager’s decision

## **APPLICABLE LEGISLATION**

[10] The following provisions are relevant to this appeal:

### ***Safety Standards Act***

Section 26 (1) An individual who wishes to be certified as qualified to perform regulated work may, in accordance with the regulations, apply to a provincial safety manager for a certificate of qualification in one or more disciplines as defined in the regulations under section 2(1)(c)

(2) An applicant who pays the required application fee and meets the requirements of the regulations for a certificate of qualification must be issued a certificate of qualification in each discipline for which the applicant is qualified.

Section 15(1) A provincial safety manager may exercise any or all of the powers of the safety officer and may do one or more of the following:

- (l) evaluate the qualifications of a person who applies for a license, certificate, permit or other permission under this Act.

### **Safety Standards General Regulation**

Section 2 An applicant for certificate of qualification must paying the requires fees and, subject to the regulations respecting the particular discipline.

- (a) provide proof, acceptable to a provincial safety manager, of the applicant's relevant training and work experience, and
- (b) pass any required examination for that certificate

Section 23(1) An individual may obtain a certificate of qualification as a field safety representative for the particular qualification set out in the certificate if the individual:

- (a) has training or experience that is recognized by the provincial safety manager
- (2) in addition to the requirements under subsection 1, a provincial safety manager may require the individual to take an appropriate examination or complete any additional training.

### **Electrical Safety Regulation (“ESR”)**

Section 8 sets out the specific requirements for an Electrical FSR qualification

Section 8(1) In order to obtain a certificate of qualification for class A, B or C as a field safety representative under section 7, an individual must:

- (a) hold an appropriate industry training credential,
- (b) complete a course in the application of electrical codes and standards required by the provincial safety manager, and
- (c) pass an examination required by the provincial safety manager

(my emphasis added)

### **ANALYSIS**

[11] The parties agree that the Appellant obtained a trade qualification as a construction electrician on November 18, 2020, and therefore he met the requirement to hold an appropriate industry training credential.

[12] There is also no controversy that the Appellant successfully completed a course in the application of electrical codes and standards on May 15, 2021, and accordingly he met the second requirement set out in the ESR.

[13] The parties also agree that at the time of his application to write the qualifying FSR exam, the Appellant did not have a minimum of one year of electrical work experience after receiving his certificate of qualification.

[14] Both the Appellant and Respondent made submissions relating to the Appellant answering “yes” in answer to whether he had held his trade qualification for a year on the FSR examination request questionnaire. The Appellant says he did so because there was no other way of submitting a request to write the exam and that he was not trying to misrepresent his qualifications. He says it was clear he had not held his qualification for a year. I accept his explanation and add that how he answered this question is not relevant to the issue to be determined on this appeal.

[15] Section 26(2) of the Act says that an individual “who meets the requirements of the regulations” must be granted a certificate of qualification. Those requirements, at least in the context of an electrical FSR, are set out in section 8 of the ESR. There, the Minister has established three specific requirements for obtaining an FSR qualification:

- 1) hold a certificate of qualification as an electrician.
- 2) successfully complete a course in electrical codes and standards, and
- 3) successfully complete the FSR examination.

[16] It is difficult to read this as creating anything other than an exhaustive list of what is required to obtain the FSR qualification. There is no mention of any requirement for a minimum amount of work experience to hold a FSR designation.

[17] The Respondent submits since the Safety Manager has the power to “evaluate qualifications”, granted to him by section 15 of the Act, this must mean that the Safety Manager has discretion to require that applicants for the examination have a certain amount of work experience. The Respondent also points to those sections of the General Regulation that refer to applicants having training or experience “acceptable to the Safety Manager” as giving the Safety Manager a wide discretion to make his own determination of who can hold an FSR designation.

[18] However, reading these provisions as implicitly giving the Safety Manager the power to

add additional requirements would be to give the Safety Manager the power to create, or amend, the regulations which is something only the Minister may do. There is nothing in the Act which delegates to the Safety Manager the power to make regulations.

[19] While it is correct to say the Safety Manager may “evaluate” qualifications, that evaluation in this context must surely mean to evaluate according to the requirements that the regulations have specified and not to create additional requirements. If the legislation intended to allow the Safety Manager to impose additional requirements it would have said so. It does not.

[20] I have considered the evidence of Mr. Durocher, which provides his justification for requiring FSR applicants to hold their trade qualification for at least one year before writing the exam. He also mentions that the work experience requirement is modeled after the Industry Training Authority (“ITA”). He says the ITA requires applicants in their apprenticeship programs to have a certain amount of experience before writing the ITA examinations. However, the Appellant is not enrolled in an apprentice program, nor is he writing a ITA exam. ITA requirements are not relevant to this appeal which must consider the requirements of the Act and regulations alone.

[21] I am required to apply the legislation as drafted, and as I have already found, the regulation does not require one year of work experience. The Appellant has met the first two requirements set out in the ESR, leaving only the successful completion of the examination, following which the Act requires that he must be given the FSR qualification.

[22] Accordingly, the appeal is allowed. The Board orders that the Appellant be permitted to write the Class B FSR examination. It is not necessary to grant the Appellant’s second request for relief, being that he be awarded the class B FSR designation upon successful completion of the exam, since that would necessarily follow under the provisions of the Act and regulations.

A handwritten signature in black ink, appearing to be 'J. P. S.', located at the bottom left of the page.