

History of Appeal

[3] The parties are largely in agreement with respect to the facts that led up to the issuance of the Monetary Penalty and notably, the Appellant does not deny the conduct that led to the imposition of the Monetary Penalty.

[4] By agreement reached at an Appeal Management Conference held in this matter, this appeal is proceeding on the basis that the facts that led up to the issuance of the Monetary Penalty are not in dispute and that the Appellant did in fact engage in regulated work without the required license or permit as documented in the Appeal Record for this appeal. It is noted by the Board that the Appellant admits to not just the infraction that spurred the imposition of the Monetary Penalty under appeal, but also a number of previous infractions, including instances that led to significant personal injury to the Appellant as well as the performance of regulated work without a license or permit in an elementary school.

[5] The Respondent, BCSA, has provided an affidavit of the Safety Manager, sworn on April 5, 2011. Although given the opportunity to reply to this affidavit, the Appellant has not filed a reply affidavit. Accordingly, the Board accepts the evidence of the Safety Manager as set out in his affidavit.

Position of the Parties

Summary of Appellant's Position

[6] As stated above, the Appellant does not dispute the fact that he was performing regulated work, namely regulated electrical work, without the required license or permit. However, he submits that the amount of the fine should be proportional to the fact that he is a small business owner and only does small jobs. He further submits that the amount of the fine should take into consideration the monetary value of the job he was engaged in and the fact that he did not continue with the regulated work after being caught and warned by the safety officer.

[7] The Appellant also raises the issue of whether the safety officer that discovered him working in violation of the Act had the authority to search his vehicle and personal property for information regarding the scope of the Appellant's infraction. He states that the safety officer ought not to have looked through his personal property and that any information acquired as a result of the safety officer's search of his vehicle and personal

property should not have any influence on the safety officer's decision to warn him and demand that he immediately cease doing the regulated work in contravention of the Act.

Summary of Respondent's Position

[8] The Respondent's position is that the Monetary Penalty complies in all respects with the Act and the *Monetary Penalties Regulation*.

[9] The Respondent states that the standard for review of the Monetary Penalty is reasonableness and that consequently the Safety Manager's decision to impose the Monetary Penalty is entitled to deference, was reasonable and ought not to be varied or reversed on appeal.

[10] The Respondent submits that the continuous, repetitive nature of the Appellant's non-compliance with the Act and the significant hazard posed by the Appellant's actions supports the Monetary Penalty imposed by the Safety Manager. In support of this submission, the Respondent states as follows:

- [11]
- a) the Appellant has a lengthy history of non-compliance and has admitted that this is not the first time he has performed regulated electrical work without a permit or license;
 - b) The restrictions on unqualified persons performing regulated work have been explained to the Appellant previously and he has twice acknowledged in writing his awareness of the applicable legal requirements;
 - c) The Appellant has earned in excess of \$100,000 through unlawful electrical work and therefore the Monetary Penalty does not come close to negating the Appellant's financial incentive to perform unlawful work;
 - d) The criteria in the *Monetary Penalties Regulation* expressly require that the whole circumstances of a case be considered, not just the value of a single job and
 - e) That while the Appellant's ability to pay is not a criteria for consideration under the *Monetary Penalties Regulation*, the Appellant's status as a small business operator was a factor in the amount of the Monetary Penalty being limited to \$7,000.00.

[12] With respect to the issue of the lawfulness of the safety officer's search of the Appellant's vehicle and personal property, the Respondent submits that section 18 of the

Act authorizes the safety officer to take such action.

Analysis

[13] As submitted by the Respondent, the standard for review of this appeal is reasonableness, which means that the Board must give deference to the discretion the legislation grants to the Safety Manager to enforce the Act and impose monetary penalties.

[14] In addition to granting deference to the discretion of the Safety Manager, pursuant to section 52 of the Act, when considering an appeal, the Board must also consider the maintenance and enhancement of public safety.

[15] Pursuant to section 40 of the Act, a safety manager may, in accordance with the regulations, impose a monetary penalty on an individual if they perform regulated electrical work without a license or a permit.

[16] The criteria for the imposition of such a monetary penalty are set out in section 3 of the *Monetary Penalties Regulation* as follows:

- a) previous enforcement actions under the Act for contraventions of a similar nature by the person;
- b) the extent of the harm, or of the degree of risk of harm, to others as a result of the contravention;
- c) whether the contravention was deliberate;
- d) whether the contravention was repeated or continuous;
- e) the length of time during which the contravention continued; and
- f) any economic benefit derived by the person from the contravention.

[17] Applying these criteria to the Appellant's actions, it is clear that the Safety Manager's decision to impose a monetary penalty was a reasonable decision. The Appellant had previously contravened the Act in a similar fashion on a number of previous occasions, the contravention, as deposed by the Safety Manager in his affidavit, was capable of leading to serious if not fatal injuries and put both the Appellant and the public at risk; the contravention was deliberate as the Appellant had previously acknowledged the requirement of being licensed on two other occasions; and he gained great economic benefit from his history of contravening the Act.

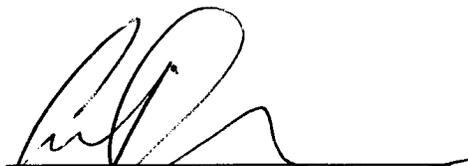
[18] The maximum Monetary Penalty permitted under the Act is \$100,000.00 and as deposed in the Safety Manager's Affidavit, the BCSA's in-house guidelines (referred to by the Safety Manager as the Monetary Penalty Assessment Checklist) suggest that the appropriate Monetary Penalty for the Appellant's actions is almost twice the \$7000.00 penalty issued to the Appellant. This suggests that the Safety Manager did in fact consider the nature of the Appellant's business and the economic benefit derived by him as a result of his ongoing contraventions of the Act.

[19] This leaves the matter of the Appellant's assertion that the safety officer unlawfully searched his vehicle and personal property as part of his investigation into the incident which spurred the imposition of the Monetary Penalty. As stated by counsel for the BCSA, section 18 of the Act provides the safety officer with the power to search any premises at any reasonable time if the safety officer has reasonable grounds to do so. Given that the search took place at the site of the infraction after the Appellant had been discovered to once again be performing regulated work without a license and was of the Appellant's vehicle, which I understand was used for work purposes, it is reasonable for the safety officer to have searched the Appellant's vehicle and personal property. Accordingly, while there may be a question as to whether the criminal law principles of unlawful search and seizure apply to evidence before this Board, such question will have to be answered another day as the safety officer in this instance was acting within the scope of his legislated powers under the Act.

Conclusion

[20] The Monetary Penalty levied by the Safety Manager in the amount of \$7000.00 should not be set aside or varied. Accordingly, the appeal is dismissed and pursuant to section 40(13) of the *Safety Standards Act*, S.B.C. 2003, c. 39 the Appellant must pay the Monetary Penalty within 30 days.

Signed by:



Emily C. Drown, Vice-Chair