

Indexed as: BCSSAB 4 (2) 2014

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

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

BETWEEN: Homeowners **APPELLANTS**

AND: British Columbia Safety Authority **RESPONDENT**

**Reasons for Decision
Application for Clarification of Reasons for Decision**

Introduction

[1] Reasons for Decision in this Appeal were issued by a panel of the Board on March 4, 2015 (the “Reasons for Decision”). The Reasons varied the decision under appeal, the March 21, 2014 decision of the Provincial Safety Manager (the “Decision”). On March 12, 2015 the Respondent wrote an email to the Board’s Registrar applying for an Order for clarification of the Reasons for Decision (the “Application for Clarification”). The Appellants responded to this Application for Clarification and stated that they did not see the need for clarification stating that the Reasons for Decision appeared clear to them.

Issue

[2] The sole issue before the Board is whether to issue clarification of the Reasons for Decision.

Submissions for the Parties

[3] The Board invited both parties to provide written submissions to the Board regarding their positions on the Application for Clarification. However, both declined to

do so. Accordingly, the Board relies upon the initial emails from each party to summarize their positions.

[4] The Respondent sought the Board's clarification of the Reasons for Decision by way of responses to the following questions:

1. Would the exterior switch be rendered compliant by the addition of a lock to prevent tampering with the switch, in particular preventing the switch from being easily moved to the 'off' position?
2. If not, what alteration(s) to the exterior switch are required by the Appeal Board to comply with the decision?
3. Regardless of the answers to the questions above, is the alteration of the exterior switch required to comply with the decision to be performed by:
 - a. The Former Contractor;
 - b. G&W; or
 - c. The Appellants (through a licensed electrical contractor of their choosing to the extent regulated work is required)

[5] The Appellants responded to the Respondent's Application for Clarification by reminding the Board that it is not the Board's nor the Respondent's place to become involved in contractual issues. The Appellants further state that regardless of the Board's potential clarification the only remedy they will accept is one that satisfies both code requirements and contractual requirements. They state that if this means that they must make the satisfactory correction themselves and pursue compensation in the court that this is what they will do. The Appellants also submit that to avoid further conflicts with the Building Code that any changes to the installation of the Switch should also be acceptable to the City of Coquitlam, the entity responsible for Building Code inspections and approvals. Finally, the Appellants state that the Board's position is very clear and they see nothing unclear about what needs to be done from a code point of view.

[6] Upon hearing that the Appellants were not interested in any clarification of the Reasons for Decision and were taking the position that the only acceptable solution to the issue of the non-compliant switch was one that met both the requirements of the code and their contractual terms with their electrical contractor, counsel for the Respondent suggested that the Respondent's Application for Clarification may in fact be moot.

Analysis

[7] In the Reasons for Decision the Board varied the Decision and held that the switch at issue in the appeal is not compliant with the provincial legislation as currently installed.

[8] As to whether the Application for Clarification is moot, the Board finds that the Application for Clarification is not moot. Just because the Appellants wish to proceed a certain way doesn't mean that clarification of the Reasons for Decision shouldn't take place if such clarification is needed and will result in a clarified decision.

[9] Section 53(3) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "ATA") sets out the process for clarification of reasons for decision issued by an administrative tribunal. Section 53 reads as follows:

Amendment to final decision

53 (1) If a party applies or on the tribunal's own initiative, the tribunal may amend a final decision to correct any of the following:

- (a) a clerical or typographical error;
- (b) an accidental or inadvertent error, omission or other similar mistake;
- (c) an arithmetical error made in a computation.

(2) Unless the tribunal determines otherwise, an amendment under subsection (1) must not be made more than 30 days after all parties have been served with the final decision.

(3) Within 30 days of being served with the final decision, a party may apply to the tribunal for clarification of the final decision and the tribunal may amend the final decision only if the tribunal considers that the amendment will clarify the final decision.

(4) The tribunal may not amend a final decision other than in those circumstances described in subsections (1) to (3).

(5) This section must not be construed as limiting the tribunal's ability, on request of a party, to reopen an application in order to cure a jurisdictional defect.

[10] Based on this legislation, the Board may only clarify the Reasons for Decision if the Board feels that that an amendment will clarify the Reasons for Decision. While the amendments sought by the Respondent would add to the Reasons for Decision, the Board does not find that they would bring any clarity to the Reasons for Decision. The Reasons for Decision are not unclear. The switch is not compliant with the provincial legislation as currently installed; this non-compliance is not unclear or vague. The Respondent wishes the Board to wade into the contractual matters that exist in this appeal between the parties and the Appellants' electrical contractor. However, how this issue of non-compliance is remedied is outside the scope of the appeal. In the compliance setting, it is appropriate for the parties involved in the installation to find a code compliant solution. The Respondent and the Board itself both stated numerous times during the course of this Appeal that the Board does not deal with contractual matters between parties and absent the consent of all parties the Board will not do so now.

Conclusion

[11] As the Board finds that the amendment requested by the Respondent would not clarify the Reasons for Decision, the Board dismisses the Respondent's Application for Clarification.

Signed:



Emily C. Drown, Chair



Ted Simmons



Tim Haaf