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**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 PRELIMINARY DECISION
Application for Stay of Revocation of Class A Certificate of Qualification

Board Member:

Pinder K. Cheema, Q.C., Vice-Chair

Introduction

[1] A gas contractor, (the Appellant) acting on his own behalf filed a notice of appeal (the Appeal) with the British Columbia Safety Standards Appeal Board (the Board) on November 22, 2005 pursuant to s. 51 (2) of the BC *Safety Standards Act*, SBC 2003, c.39 (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.”

[2] The Appellant is a registered contractor under section 23 of the Act holding 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. He appealed the decision of the Respondent dated November 18, 2005 revoking his Class A Certificate of Qualification. In addition, pursuant to section 54 (2) of the Act, he requested a stay of the Respondent’s decision and that his Class A status remain in effect until a final determination was made by the Board. Section 54 (2) reads as follows:

“On application, the appeal board, a panel or a member of the board may order that the decision being appealed is stayed for a period of time or subject to conditions, or both”.

This section must be read in conjunction with section 15 of the *Administrative Tribunals Act* (the ATA) which provides:

“The tribunal may make an interim order in an application.”

[3] The Chair of the Board has delegated authority to me pursuant to section 26(9) of the *Administrative Tribunals Act* (ATA) to determine whether the application for a stay should be granted. Section 26(9) provides:

“The chair or the chair’s delegate may hear and decide any interim or preliminary matter in an application, and for that purpose may exercise any of the powers of the tribunal necessary to decide the matter.”

I also note that Section 44 of the Act incorporates Sections 1 to 22, 24, and 26 of the ATA (among others) so they apply to the Board.

Position of the Parties

[4] The Board is established under section 43 of the Act to hear appeals arising from decisions of safety managers.

[5] The Respondent is a non profit organization established under the *Safety Authority Act* of British Columbia to administer technical safety in the province, including gas safety.

[6] The Appellant filed his Notice of Appeal on November 22, 2005 and included a separate handwritten page wherein he requested a stay. As well, he stated on page 4 of his notice:

"I am also asking for a stay of order against the revocation of my "A" Class standing until an independent review board can determine the status based on evidence presented."

[7] The prescribed Form 4, "Application for an Interim Order" was not included in the Appellant's documents.

[8] The Respondent filed his Response to Appeal on December 15, 2005, wherein he addressed the stay issue in Schedule "A". He opposed the Appellant's application for a stay for a number of reasons, including no stated prejudice to the Appellant, his lack of willingness to comply and risk to the public.

[9] In support of his application for a stay, the Appellant filed further materials on December 19, 2005 wherein he stated on page 7:

"As none of the work performed under any rejection ever issued against me falls under the scope of an "A" licence then I would suggest a stay of order until a hearing can determine the extent of my "crime". There is no public safety risk as I still have a "B" licence and any work performed was under that grade of licence."

[10] The Registrar wrote to the Appellant on December 20, 2005 enclosing the Respondent's Response and requesting that he provide reasons why the order was required. The Appellant responded on December 22 on page 3 of his materials that:

"All the work performed under the rejections was a "B" ticket not as an "A". So nothing is being resolved on the BC Safety Authority's end by revoking the "A". This does make the work I do on an industrial level not possible until the Appeal is determined and as such want the Stay of order imposed so my customer base and income does not erode any further until the Appeal Board determines its status."

Analysis

[11] The Board has authority, pursuant to section 11 of the ATA, to make rules respecting practice and procedure. Accordingly, the Board has created a tripartite procedural system to administer the management of appeals consisting of:

a) Practice Directives and Guidelines (the Guidelines), divided into 18 sections setting out the procedural requirements for an appeal; section 9 sets out the specific procedure for Applications for Interim Orders,

b) Rules of Practice and Procedure (the Rules), divided into 8 parts whose purpose is to facilitate the just and timely resolution of appeals to the Board under the *Safety Standards Act*; part 6 consists of Rules 26 – 29 dealing with Applications for Interim Orders, and

c) Forms and Schedules consisting of a number of forms including Form 4 - Application for an Interim Order.

[12] Section 9 of the Guidelines imposes the following requirement:

“It is not necessary that Form 4 be used but the application must be in writing and contain the following information:

- a description of the order the applicant wishes to obtain from the board
- the reason the order is required
- details of any attempts made to resolve the issue without an order.

[13] Further, Rule 27 obliges the applicant as follows:

“1. Before applying for an order an applicant must determine whether the other parties and any interveners consent, oppose, or take no position regarding the application.

2. Before applying for an order, the applicant must first take any practical steps to resolve the issue for which that applicant wants an order.”

[14] Rule 28 obliges the applicant as follows:

“1. If a participant wants to obtain an order of any kind from the board, the participant must:

- a. complete an Application for an Interim Order (Form 4);
- b. deliver a copy of the completed application Form to the other parties and any other person affected by the application within two (2) days of filing the application with the board; and
- c. file the completed application form [see rule 8].

[15] The Appellant has not complied with the requirements of Rule 27 stated above, specifically to take steps to determine the position of the other parties to his application, and, further to take steps to resolve the issue for which he wants the order. He has not complied with Rule 28 and used Form 4, or alternatively, provided the requisite information including details of any attempts made to resolve this issue.

[16] I note however, that there exists the discretion to relieve against the strict construction of the Guideline and Rules in section 13 (2) of the ATA which states:

“The tribunal is not bound by its practice directives in the exercise of its powers or the performance of its duties.”

In so concluding, I am also mindful that the Appellant is acting on his own behalf. Accordingly, I am prepared to consider the Appellant’s application even though he has not complied strictly with the Rules and Guidelines respecting Interim Orders.

[17] When hearing appeals, section 52 (1) of the Act provides that:

‘... the appeal board must consider the maintenance and enhancement of public safety.’

[18] While this is an application for an interim order, it is an integral part of the appeal itself and I find that section 52 applies to the whole of the appeal process, including interim orders. To conclude otherwise would render the issue of public safety of little, if any concern at this interim stage. This is clearly not the intent of the Act.

[19] Although the Appellant’s interest in requesting a stay of the Revocation Order is understandable, I agree with the Authority that:

- to allow the Respondent to maintain his Class A licence during the appeal would put at risk those individuals who retain his services, and
- that the appellant does not state what prejudice would arise if the Appellant had to rely on his Class B licence, and
- that the Appellant does not explain why the decision to revoke was wrongfully made.

[20] I also find that while the Appellant’s concern is to maintain his customer base and income he fails to state how, if at all, the revocation of his Class A licence will affect them. Of further concern is the Appellant’s failure to address the central issue of how he would propose to deal with his apparent history of non compliance if a stay were granted. I am therefore satisfied that an interim stay of the Revocation Order of November 18, 2005 would risk the safety of the public and further, that any benefit to his customer base and income resulting from granting a stay would be minimal.

Conclusion

[21] For the reasons given, I dismiss the Appellant’s application for a stay of the Revocation Order.