July 7, 2014
Appeal No. SSAB 1-2014

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

AMONG:	**AN APPELLANT and HEATING CORP.**	Appellants
AND:	**BRITISH COLUMBIA SAFETY AUTHORITY**	Respondent
AND:	**VILLAGE IN BRITISH COLUMBIA**	Interested Party

REASONS FOR DECISION

Introduction

[1] The Appellants are the Appellant and Heating Corp. The Appellant is a principle of the Heating Corp. Together, the Board shall refer to these parties as the Appellants. The Respondent is the British Columbia Safety Authority and the Board shall refer to this entity as the Respondent. The Village in British Columbia is also involved in this Appeal as they are directly affected by the outcome of the Appeal. The Board will refer to this party to the appeal as the Village throughout these reasons for decision.

[2] The Appellants seek review of the decision of the Provincial Safety Manager, dated January 24, 2014(the "Review Decision"), which decision held that a boiler installed by the Appellants in property owned by the Village is not exempt from the legislation and regulation governing boilers in British Columbia. If exempt, the boiler in question is permitted to be installed without the need to have the boiler's design registered and approved by the British Columbia Safety Authority. If, as the Provincial Safety Manager has stated, the boiler is not exempt from the application of the legislation and regulations, then the boiler's design must be registered and approved by the British Columbia Safety Authority.

[3] The boiler in question's design has not yet been registered and approved by the British Columbia Safety Authority. However, it has already been installed. This installation is why the Village is a party in this appeal. Depending on the outcome of this appeal, the Village's newly installed boiler system could be significantly impacted.

Issues

[4] An appeal management conference was held in this appeal on March 19, 2014. At that time, the parties discussed the issues in this appeal and it was determined that the sole issue before the Board in this appeal is the legal interpretation of the exemption set out in Section 3(2)(f) of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, BC Reg 104/2004 (the "Regulation") and whether such exemption applies to the boiler installed by the Appellants in this Appeal.

[5] The Board notes, that after the Appeal Management Conference record was circulated to the parties to the Appeal that the Appellants took issue with the framing of the issue set out above. The Appellants submit that the issue should be the interpretation of the exemption set out in section 2.2(d) of manual MAN 4030 – 01 of the British Columbia Safety Authority (the "Manual"). This discrepancy will be dealt with below.

History of the Appeal

[6] At the Appeal Management Conference held on March 19, 2014, the parties agreed that this Appeal would proceed via written submissions. Accordingly, both parties have provided additional evidence to the Board outside of that contained in the Appeal Record as well as written submissions in support of their respective positions. The panel has reviewed and considered the contents of the appeal record as well as all new evidence and submissions provided by the parties.

Position of the Parties

The Appellants' Position

[7] The Appellants state that the issue to be determined is the interpretation of clause 2.2(d) of manual MAN 4030 – 01 of the British Columbia Safety Authority, which reads as follows:

> 2.1 Except as indicated in clause 2.2 this procedure applies to all biomass boilers used to generate steam or heat water.
>
> 2.2 This procedure does not apply to a biomass boiler that:
> …
> (d) is installed in a water heating system operating at a pressure not exceeding 1100 Kpa or a temperature not exceeding 121C that is located in a building that contains only 4 or fewer self-contained residential units.

[8] The Appellants submit that the definitions of "building" and "fewer" in this clause mean that the exemption applies to the boiler in question as it has been installed in a structure with no residential units. In this regard, the Appellants submit that as the word "building" is not defined in the Regulation that it should be given the definition found in the National Building Code (2010), which reads: "Building means any structure used or intended for supporting or sheltering any use or occupancy." Based upon this definition, the Appellants submit that the exemption applies to any structure that has four or fewer residential units provided that the boiler is of a type to qualify for the exemption. The Appellant further states that the only qualifier in the clause in question is the requirement for the building to only contain four or fewer self-contained residential units. The Appellant submits that the Canada Mortgage and Housing Corporation's ("CMHC") definition of "self-contained unit" is "a unit that provides living, sleeping, eating, food preparation, and bathroom facilities." Using this definition, the Appellant submits that any biomass boiler of any size is exempt from the application of the regulations if it is not installed in a building with at least five self-contained residential units. The Appellants state that the Provincial Safety Manager has mistakenly used the definition of "few" instead of that for "fewer" when interpreting the clause.

[9] The Appellants submit that their interpretation does not create the absurdity suggested by the Respondent. In this regard, they state that the clause in question granting the exemption relates to only low temperature/low pressure biomass boilers. Further, the Appellants note that other jurisdictions within Canada have legislated exemptions that go even further, such as Ontario where all boilers of any size, temperature and pressure are exempted from regulation as long as they are used for agricultural purposes.

[10] The Appellants also submit that the boiler in question is safe. They point to the fact that the type of boiler in question has been approved in both Ontario and Prince Edward Island and that they filed new evidence with the Board that they submit illustrates that the boiler in question complies with the technical specifications required for the exemption in British Columbia.

The Respondent's Position

[11] The Respondent states that the Provincial Safety Manager was correct in his decision that the boiler in question does not comply with the legislated requirements to be exempt from an application of the Regulations. In the alternative, the Respondent states that the Provincial Safety Manger, if not correct, was reasonable in his decision. The Respondent relies on Affidavit #1 of the Provincial Safety Manger, sworn March 28, 2014.

[12] As set out above, the Respondent disagrees with the Appellants as to the exact clause at issue in this appeal. The Respondent states that the actual clause at issue is section 3(2)(f) of the Regulation and not the Manual. Clause 3(2)(f) of the Regulation is very similar to clause 2.2(d) of the Manual and reads:

> (2) Despite subsection (1), this regulation does not apply to any of the following:
>
> …
>
> (f) a heating plant, refrigeration plant or pressure vessel plant, other than plants with toxic or flammable contents, that are located in a building that contains only 4 or fewer self-contained residential units….

[13] The Respondent states that pursuant to section 3(1) of the Regulation, every boiler in the province is subject to the Regulation unless it is exempted by section 3(2), which clause is quoted above.

[14] The Respondent states that the Provincial Safety Manger is correct in his interpretation of section 3(2) of the Regulation. In support of this assertion, the Respondent notes that the clause contains the word "only" and that pursuant to the rules of statutory interpretation as set out in *Sullivan and Driedger on the Construction of Statutes* , 4th ed (Butterworths Canada ltd., 2002) ("Sullivan and Driedger") this word must be given meaning as all words included in a statute are presumed to have meaning and are presumed to make sense and to have a specific roll to play in advancing the legislative purpose of the statute. In this regard, the Respondent states that the word "only" applies to "four or fewer self-contained residential units" and means that the exemption only applies if the building in question contains four or fewer self-contained residential units. The Respondent submits that the inclusion of the word "only" in the clause means that it cannot be interpreted to mean buildings without residential units. The Respondent further submits that the rules of statutory interpretation state that enactments are to be interpreted according to the presumption of straightforward expression and notes that the only reference to "residential" in the Regulation is in the clause under consideration and that accordingly, the inclusion of residential must be taken as an intentional delineation by the legislators.

[15] Further, the Respondent states that the Appellants' interpretation would lead to an absurd interpretation whereby a large proportion of heating plants, refrigeration plants or pressure vessel plants, including commercial and industrial boilers are not subject to any form of safety regulation. They further state that there is no rational reason for the legislators to have excluded the largest and most potentially dangerous commercial and industrial heating boilers from the requirements of the Regulation.

[16] Finally, the Respondent states that pursuant to section 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 ("the "Interpretation Act") that "every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects." The Respondent states that the objects of the *Safety Standards Act*, S.B.C. 2003, c. 39 (the "Act"), which

the Regulation falls under, are inarguably to promote and enhance public safety in respect of regulated work and products and that any interpretation of the Regulation that exempts large swathes of potentially hazardous work without any rational basis or clear direction from the legislator would offend the principle enshrined in this section of the Interpretation Act. Further, the Respondent states, such interpretation would also go against section 52 of the *Safety Standards Act* whereby the Board must consider the maintenance and enhancement of public safety when considering appeals.

The Village's Position

[17] The Village advises that it is not taking a position either way with respect to the outcome of this Appeal. However, despite the lack of a position on the merits of the Appeal, the Village's representative advises that the Village will be impacted directly by the decision of the Board.

Analysis

Which clause applies? Manual or Regulation?

[18] As noted above, there is disagreement between the parties with respect to whether the issue to be determined by the Board is the interpretation of section 2.2(d) of the Manual or section 3(2) of the Regulation.

[19] The Respondent is a creature of statute. It has been created by the legislature for a specific purpose. This purpose and its jurisdiction are set out in the legislation passed, namely the *Safety Standards Act*, its regulations and the various regulations that are overseen by the Safety Authority.

[20] While it may well be that the Respondent referred to the Manual in its previous dealings with the Appellant, the actual law to be applied and considered is that set out in the Regulation. Accordingly, the interpretive issue to be addressed in these reasons for decision is the interpretation of clause 3.1(f) of the Regulation.

[21] That being said, while the Board finds that the purpose of the Manual is to assist in the interpretation and application of the Regulation, reliance on the Manual to the

exclusion of reference to the Regulation is problematic. To the extent that the Manual can be amended to indicate that it is an interpretive guide, it may be useful to do so.

Section 3 of the Regulation

[22] Turning to the issue at hand, section 3(1) of the Regulation states:

> This regulation applies in respect of every boiler and boiler plant, every pressure plant, every pressure vessel, every pressure piping system, every fitting, every plant and all refrigeration equipment and refrigeration plants.

[23] As set out above, Section 3(2) of the Regulation states:

> (2) Despite subsection (1), this regulation does not apply to any of the following:
>
> …
>
> (f) a heating plant, refrigeration plant or pressure vessel plant, other than plants with toxic or flammable contents, that are located in a building that contains only 4 or fewer self-contained residential units….

[24] There are certain rules that govern the interpretation of statutes. The leading authority on this matter is the text, Sullivan and Driedger, referred to above. As submitted by the Respondent, the rules of statutory interpretation require all words in an enactment to carry meaning. Accordingly, the word "only" in section 3(2)(f) of the Regulation must be interpreted to limit the exemption otherwise set out in that clause. Accordingly, the Board finds that to qualify for the exemption the boiler must be installed in a building that contains only four or fewer self-contained residential units. If, as the Appellants submit, this were interpreted to mean all buildings other than those containing five or more residential units, the legislature surely would have clearly said so. The interpretation sought by the Appellants results in an absurdity. The Board notes the Appellants' submission that such an absurdity does not result because the exemption only applies to low pressure/low temperature boilers. However, the Board cannot agree with this submission. Given that the exemption stems from the wording of the Regulation and not the wording of the Manual, there is no low temperature/low pressure requirement. Given the public safety object of both the Safety Authority and the Board it simply does not make sense that clause 3.2(f) should be interpreted to permit all boilers

in industrial and commercial applications to be exempt from the regulatory scheme set out in the Regulations.

[25] These reasons deal with the interpretation of section 3(2) of the Regulation. They do not address the licensing process enumerated in the Act. As set out in the Provincial Safety Manger's Affidavit: "It is entirely possible that the Village Boiler's design and construction is adequate for safe operation in this province, however, I cannot assess this until the Appellants provide the required information." While this panel of the Board has found that the boiler in question is not exempt from the application of the Regulation, it may well comply with the requirements needed for approval and licensing in the province of British Columbia. However, as set out in the Provincial Safety Manger's affidavit, there is insufficient evidence before the Board to determine the issue. It is not enough for the Appellants to simply state that the boiler is safe and that it has been approved in other jurisdictions. While the panel appreciates that the Appellants have provided the Board with independent testing stating that the boiler is in compliance with the requirements of the legislation, the requisite procedures for approval as set out in the Regulations have not been met. Accordingly, the panel urges all parties to proceed expeditiously with that application.

Conclusion

[26] For the reasons set out above, the appeal is dismissed.

Signed: