

CANADA / JUDGMENT

Workers' Compensation Board v. Phatte Chuk Framing Ltd.

2025 BCSC 1695

COURT

Supreme Court of British Columbia

DECIDED

6 June 2025

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2025 BCSC 1695 Workers' Compensation Board v. Phatte Chuk Framing Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Workers' Compensation Board v. Phatte Chuk Framing Ltd.,

2025 BCSC 1695

Date: 20250606

Docket: S248786

Registry: Vancouver

Between:

Workers' Compensation Board

Petitioner

And

Phatte Chuk Framing Ltd. and Dharmjit Singh Shergill

Respondents

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

R. Androsoff

R.D. Warner

For the Respondents:

No appearance

Place and Date of Hearing:

Vancouver, B.C.

June 6, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 6, 2025

- [1] THE COURT: These reasons were delivered orally. They have been edited for distribution to the parties. Neither the reasoning nor the outcome have changed.

I. Introduction

- [2] The petitioner, Workers' Compensation Board [the "Board"] is before the court seeking statutory injunctive relief against the respondents, Phatte Chuk Framing Ltd. ("PCF") and its director and principal, Dharmjit Singh Shergill, that would restrain them from contravening, and require their compliance with, their obligations under various provisions of the Workers Compensation Act, RSBC 2019, c. 1 [the "Act"] and the Occupational Health and Safety Regulation, B.C. Reg. 296/97 [the "Regulation"].
- [3] Although both of the respondents have been served with this application - PCF by delivery to registered office and Mr. Shergill in accordance with an order for substituted service - neither have appeared on this application today.

II. Facts and evidence

1. The parties

- [4] The Act, which came into force on April 6, 2020, is a restructured, but not substantively altered, version of the former Workers Compensation Act, RSBC 1996, c. 92 (the "Former Act"). Part 2 of the Act sets out the provisions relating to occupational health and safety (the "OHS provisions"), the purpose of which is to "benefit all citizens of British Columbia by promoting occupational health and safety and protecting workers and other persons present at workplaces from work-related risks to their health and safety": Act, s. 14(1).
- [5] Section 14(2) sets out some of the specific purposes of the OHS provisions. They include:
- (b) to prevent work-related accidents, injuries and illnesses;

- (d) to ensure an occupational environment that provides for the health and safety of workers and others; [and]
- (e) to ensure that employers, workers and others who are in a position to affect the occupational health and safety of workers share that responsibility to the extent of each party's authority and ability to do so
- [6] The Board is created by and charged with the administration of the Act and the Regulation. Its duties include undertaking inspections, investigations and inquiries on matters of occupational health and safety and occupational environment.
- [7] Division 12 of Part 2 of the Act provides the Board with enforcement powers. Those powers include the ability to enter into compliance agreement, to make orders for the carrying out of any matter regulated, controlled or required by the OHS provisions or the Regulation, to issue stop work orders, and to impose administrative penalties. Section 97 allows the Board to make an application to Court for the form injunctive relief sought at this hearing.
- [8] PCF carries on a residential framing business performing framing work on residential construction sites at various locations in Vancouver. It has been registered as an employer with the Board since March 1, 2018.
- [9] In addition to his role as director of PCF, Mr. Shergill is also often on the jobsite performing framing work with other PCF employees. The framing work is often performed at high elevations, including on roofs and ladders.
- [10] The framing industry is one in which falls from elevations are a significant risk. Between 2018 and 2023, the Board accepted 98 work-related death claims involving falls from elevation. In that same time period, there were approximately 27,000 claims for falls which resulted in compensation payments of approximately \$750 million.

2. Background

- [11] The circumstances giving rise to the application before the court today are set out in detail at paras. 10 through 42 of the petition, all of which I accept and adopt as an accurate summary of events.
- [12] In brief, commencing on March 1, 2018 and continuing until June 20, 2024, several of the Board's officers conducted numerous inspections of nine PCF jobsites where they observed and recorded numerous contraventions of the Act (and the Former Act) and the Regulation on the part of PCF and Mr. Shergill who was on the jobsite for many of those attendances.
- [13] As a result of those inspections, between 2018 and 2024, the Board issued numerous orders and administrative penalties, some of which relate to at least seven occasions on which PCF and its employees conducted framing activities on building roofs at elevations ranging from 16 to 32 feet above grade without the use of a fall protection system, contrary to s. 11.2(1)(a) of the Regulation. That provision requires, unless elsewhere provided for in the Regulation, that an employer ensure that a fall protection system is used when work is being performed

at a place from which a fall of 3 meters (10 feet) or more may occur.

- [14] Other contraventions for which orders and administrative penalties have been made include numerous and various unsafe construction practices and worksite conditions and failures to have a certified first aid attendant or first aid kit was available on site.
- [15] As noted, Mr. Shergill was present at many, if not most, of the inspections in respect of which the orders and administrative penalties were imposed, including on those occasions on which the Board's officers found adequate fall protection systems were not used. The Board's officers have found that, contrary to s. 115(2)(e) of the Former Act and s. 21(2)(e) of the Act, Mr. Shergill had failed to adequately inform, instruct and supervise the workers with respect to the use of fall protection equipment.
- [16] In respect of all of the contraventions, since 2018, the Board has issued a one warning letter, made 56 compliance orders (including stop work orders), and imposed escalating administrative penalties ranging from \$2,500 to 20,000, totaling \$56,000.
- [17] Despite the escalating nature of the orders and penalties imposed against PCF and Mr. Shergill, it appears that contraventions of the nature I have described other contraventions of the Act and the Regulation have continued to at least June 2024. It is in respect of the continuing contraventions of the Act and the Regulation that the Board has brought this application under s. 97 of the Act for statutory injunction that would, generally speaking, restrain them from contravening, and require their compliance with, their obligations under certain provisions of the Act and the Regulation.

III. Legal Framework

[18] Section 97 of the Act provides:

97(1) On application of the Board and on being satisfied that there are reasonable grounds to believe that a person

- (a) has contravened or is likely to contravene the OHS provisions, the regulations or an order, or
- (b) has failed to comply with, or is likely to fail to comply with, the OHS provisions, the regulations or an order,

the Supreme Court may grant an injunction,

- (c) in the case of paragraph (a), restraining the person from continuing or committing the contravention,
- (d) in the case of paragraph (b), requiring the person to comply, and
- (e) in the case of paragraph (a) or (b), restraining the person from carrying on an industry, or an activity in an industry, within the scope of the compensation provisions for an indefinite or limited period or until the occurrence of a specified event.

[Added emphasis.]

[19] The Board is seeking the injunctions contemplated by s. 97(1)(c) and (d).

[20] The test to grant an injunction under s. 97(1) is a two-staged inquiry:

- a) The first stage requires an understanding of what constitutes a breach under the Act or the Regulation. This part of the inquiry "is a relatively straightforward question of statutory interpretation"; and
- b) The second part of the inquiry raises a factual question about whether the respondents' conduct provides reasonable grounds to believe that a breach of the Act or the Regulation has occurred. The "reasonable grounds to believe standard" is relatively low, requiring more than mere suspicion, but less than proof on a balance of probabilities.

See: British Columbia (Workers' Compensation Board) v. D & G Hazmat Services Ltd., 2024 BCCA 127 [D&G Hazmat] at paras. 31 - 33, citing Workers' Compensation Board v. E H Z Pre-Demolition Ltd., 2023 BCSC 831 [E H Z Pre-Demolition] at paras. 18 - 19.

[21] Where the Court finds there to be reasonable grounds to believe that the respondents have breached the Act or the Regulation, the burden shifts to the respondents to establish that the remedy of an injunction is not appropriate: E H Z Pre-Demolition at para. 81.

[22] Unlike the test for the granting of a common law injunction, the test for granting statutory injunctions, such as the injunction contemplated by s. 97(1), does not require that an applicant prove irreparable harm nor does the Court have to assess the balance of convenience as between the parties. Rather, an application for a statutory injunction engages the public interest in seeing that a public statute is given effect. The interests of the person subject to the potential injunction must be weighed against this strong public interest: Abbotsford (City) v. Weeds Glass & Gifts Ltd., 2016 BCSC 135 at paras. 20 -22; British Columbia (Workers' Compensation Board) v. 3D Environmental Groups Ltd., 2018 BCSC 2525 at para. 8.

[23] If the Board has met the statutory requirements for an injunction under s. 97, the Court's discretion to refuse to grant the injunction is narrow and should only be exercised in exceptional circumstances: D&G Hazmat at para. 73 and 78; E H Z Pre-Demolition at para. 23.

IV. Discussion and Analysis

[24] In considering: (a) what constitutes a breach of the Act and the Regulation, and (b) whether the respondents' conduct amounts to a breach, I am guided by the fact that, having attended at and conducted inspections of various of PCF's jobsites, the Board has issued the orders and the administrative penalties that it has. In doing so, the Board has determined that the respondents have breached the Act and the Regulation in the ways set out in the officer's inspection reports and as contemplated in the orders and administrative penalties.

- [25] Notably, Part 6 of the Act provides for an internal review process for orders made and administrative or other monetary penalties imposed under the Act. Part 7 provides for an appeal process in respect of those reviews. Neither process was taken up by the respondents in respect of any of the orders or administrative penalties that were imposed in this case. That being the case, there is no basis on which to challenge the Board's determinations that breaches have occurred or the validity of the orders and administrative penalties: *E H Z Pre-Demolition* at paras. 29-33.
- [26] On that basis, I am satisfied that there are reasonable grounds to believe that each of the respondents has contravened or has failed to comply with the Act's OHS provisions and the Regulation.
- [27] However, does not end the analysis. I must also consider whether there is any basis on which to conclude that the remedy of an injunction is not appropriate. The respondents did not attend at the hearing of this application and did not make any submissions in that regard. However, it is instructive that the escalating measures that the Board has imposed to try to stop the non-compliance has not resulted in the respondents' compliance with the Act or the Regulation. As Justice Iyer (then of this Court) notes in *E H Z Pre-Demolition*:
- [11] There is no dispute that this system is progressive, in that the general goal is to achieve compliance with the Act and Regulation using the least restrictive measures, and resorting to more severe sanctions only where lesser measures have failed. For example, if successive administrative penalties are imposed, they will be for greater sums. The s. 97 injunction is a severe sanction because it is the penultimate step before the "last resort" of an order for contempt of court.
- [28] In this case, the respondents' continued failure to comply with their obligations under the Act and the Regulation despite the numerous orders and escalating administrative penalties well demonstrates that the Board's enforcement efforts to date have not been successful in securing the respondents' compliance with the regulatory safety regime. I am satisfied that no exceptional circumstances exist so as to relieve the respondents from the "next step" in the enforcement process, that being the statutory injunctive relief sought.
- [29] I am also satisfied that given the high risk inherent in the framing industry associated with falls from elevation, and the fact that many of the respondents' violations of the Act and the Regulation arise from failures to use required fall protection equipment, there is a strong public interest in favour of granting the injunction sought.
- [30] For the foregoing reasons, I find that the Board has met the test for a s. 97(1) injunction against PCF and Mr. Shergill.
- [31] I now turn to the specific terms of the injunction sought.

- [32] As contemplated by s. 97(1), the Board seeks an injunction that would restrain the respondents from contravening, and require their compliance with, their obligations under certain provisions of the Act and the Regulation. Those provisions include:
- a) some that were not the basis of the orders or the administrative penalties that have been imposed and, accordingly, for which I cannot conclude the respondents have breached; and
 - b) Part 2, Divisions 11 and 12 of the Act, which relate, not directly to their breaches, but to the Board's investigative and enforcement powers generally.
- [33] I am nonetheless satisfied that it is appropriate to grant the injunction on the terms sought.
- [34] In *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2017 BCCA 19 [Seattle Environmental], the Court held that a broad order restraining the respondents from breaching the entire Act and Regulation was appropriate, noting:
- [97] In my view, the answer to this issue lies in the scheme of the Act and the statutory language. Subsection 198(1) provides that the Supreme Court may grant an injunction requiring a person to "comply" with "this Part, the regulations or an order" on an application in the specified circumstances. One of the specified circumstances is where "a person (b) has failed to comply with, or is likely to fail to comply with, this Part, the regulations or an order".
- [98] That is precisely the order the Board sought and obtained from Russell J., in the context of a statute that already required the respondents to comply with the statute and regulations and where, it was alleged, the persons concerned had been found to be in breach of numerous statutory and regulatory requirements leading up to obtaining the order. While the order may be broad, it was particularly appropriate, and legislatively permitted, in the circumstances of this case.
- [35] And further:
- [106] I would also note that this is somewhat of an extraordinary case. The matter before the court involves a lengthy and continuing history of multiple types of workplace conduct said to be of a very serious nature. It involves for-profit actors with statutory duties in a highly regulated workplace. There have been multiple Board orders, compliance reports and administrative penalties. In such circumstances, an order requiring compliance with the statute and regulations may be viewed somewhat differently than matters involving isolated incidents or infrequent conduct.
- [36] Like the respondents in *Seattle Environmental*, PCF and Mr. Shergill have a continuing history of orders and escalating penalties for an extended period of time, in this case, commencing immediately on PCF's registration with the Board in 2018. This is not a case "involving isolated incidents or infrequent conduct".

[37] In effect, the injunction contemplated by s. 97(1) simply requires the respondents to comply with their statutory obligations under the Act and the Regulation. The obligations imposed by the statutory regime are in place to, among other things, to prevent work related accidents and to ensure an occupational environment that provides for the health and safety of workers and others. In my view, in the circumstances of this case, the public interest justifies the broad scope of the injunction sought.

[38] I am satisfied that the scope of the injunction sought is appropriate.

V. Disposition

[39] For the reasons set out above, pursuant to s. 97(1) of the Act, the following orders, set out at Part 1, paras. 1 and 2 of the Petition are granted:

- a) PCF and Mr. Shergill, and each of them, are restrained from continuing or committing contraventions of the Act, Part 2, Divisions 4, 11 and 12, and the Regulation, Parts 2, 3, 4, 6, 8, 11, 12, 13, 14, 15, and 20; and
- b) PCF and Mr. Shergill, and each of them, are required to comply with the Act, Divisions 4, 11 and 12, and the Regulation, BC Reg 296/97, Parts 2, 3, 4, 6, 8, 11, 12, 13, 14, 15, and 20.

VI. Costs

[40] The general rule is that costs are to be awarded in favour of the substantially successful party. However, in this case, no order for costs was sought in the petition. That being the case, in my view, it would not be appropriate to award costs of this application. Counsel has, I think quite rightly, agreed to not insist that costs be awarded.

[41] No costs are therefore awarded in favour of the petitioner.

[42] I am grateful for the meticulous, yet efficient, manner in which counsel reviewed both the facts and the law related to this matter.

"Ahmad J."

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