COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *British Columbia (Workers' Compensation Board) v. D & G Hazmat Services Ltd.,* 2024 BCCA 127

Date: 20240405
Docket: CA49169

Between:

Workers' Compensation Board

Appellant
(Petitioner)

And

D & G Hazmat Services Ltd., Davinder (Dave) Singh Gaday also known as Gurjinder (Dave) Singh Jaswal also known as Gurjinder (Dave) Singh, 117095 B.C. Ltd., dba First Choice Hazmat/First Choice Environmental and Sharanjit Kaur

Respondents
(Respondents)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated June 2, 2023 (*British Columbia (Workers Compensation Board) v. D & G Hazmat Services Ltd.*, 2023 BCSC 1059, Vancouver Docket S209816).

Counsel for the Appellant:	J.M. Goosen B. Parkin
Counsel for the Respondent, Davinder Dave Singh Gaday:	G.A. Hooper
Place and Date of Hearing:	Vancouver, British Columbia January 26, 2024
Place and Date of Judgment:	Vancouver, British Columbia April 5, 2024

Written Reasons by:
The Honourable Mr. Justice Abrioux

Concurred in by:
The Honourable Chief Justice Marchand
The Honourable Mr. Justice Willcock

Summary:

The appellant Workers' Compensation Board appeals the order dismissing its petition seeking a statutory injunction against the respondents pursuant to s. 97(1) of the Workers Compensation Act. The appellant argues that the chambers judge incorrectly applied the test under s. 97(1) in determining whether the injunction should be granted. HELD: Appeal allowed. The chambers judge erred by determining that the appellant did not satisfy the factual test set out in s. 97(1). There is limited discretion to deny a statutory injunction under s. 97(1) once the factual test has been made out in the absence of exceptional circumstances. No such circumstances exist and the injunction is granted.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

Introduction

[1] The appellant Workers' Compensation Board (the "Board") appeals the order dismissing its petition in which it sought a statutory injunction pursuant to s. 97(1) of the *Workers Compensation Act*, R.S.B.C. 2019, c.1 (the "*Act*") requiring the respondents D & G Hazmat Services Ltd. ("D & G") and Davinder (Dave) Singh Gaday to comply with both the occupational health and safety ("OHS") provisions of the *Act* and the *Occupational Health and Safety Regulation*, B.C. Reg. 296/97 (the "Regulation").

[2] This appeal raises issues concerning the legal framework to be applied to petitions brought pursuant to s. 97(1) of the *Act* and its application to the circumstances of this case.

[3] The Board discontinued the proceedings against the respondents 117095 B.C. Ltd. ("117") and Sharanjit Kaur; D & G was unrepresented at the hearing of the petition in the Supreme Court of British Columbia and in this Court.

[4] For the reasons that follow, I would allow the appeal and grant the injunction.

Background

[5] Mr. Gaday was at one time, the director of D & G which was registered with the Board as an asbestos abatement company, and carried on operations from

January 2013 until October 2018. Between January 2015 and October 2018, the Board issued OHS orders against D & G including 45 potential high-risk violations, five stop work orders and five administrative penalties (the "OHS Orders").

[6] On October 9, 2018, the Board issued a stop operations order against D & G prohibiting them from working on sites where asbestos abatement may occur (the "D & G Stop Operations Order"). D & G unsuccessfully sought a review of that order. At that time D & G ceased operations, and its registration with the Board was eventually cancelled due to inactivity.

[7] On July 6, 2018, 117 registered with the Board as an asbestos abatement company. Mr. Gaday was employed by 117. Ms. Kaur who is Mr. Gaday's aunt, is the sole director of 117. 117's registration with the Board was cancelled on May 16, 2019. Mr. Gaday applied to renew the registration, and informed the Board that 117 was not affiliated with D & G. In early 2020, Mr. Gaday submitted a form on behalf of 117 that indicated he was responsible for asbestos abatement on one of 117's projects.

[8] On January 8, 2020, the Board took the position that D & G and 117 were related entities, and that D & G's history of OHS violations should be transferred to 117 (the "Transfer Decision"). Shortly after the Transfer Decision, 117 was cited for seven high-risk violations. The Board also concluded that because they were effectively the same entity, the D & G Stop Operations Order applied to 117 (the "117 Stop Operations Order").

[9] I will refer to the D & G Stop Operations Order, the Transfer Decision and the 117 Stop Operations Order collectively as the "Administrative Decisions".

The Legislative Framework

[10] In *Workers' Compensation Board v. E.H.Z Pre-Demolition Ltd.*, 2023 BCSC 831 [*EHZ*] Justice Iyer provides a helpful overview of the legislative framework which applies to the Board's responsibilities generally in regard to occupational health and safety matters and the asbestos abatement industry in particular:

[3] The Board's mandate with respect to occupational health and safety ("OHS") in the asbestos abatement industry is to ensure that employers use measures to protect workers from the risks of exposure to asbestos fibres, which are well-known to be hazardous to human health. The Board's detailed regulations and policies governing asbestos abatement are set out in the *Occupational Health and Safety Regulation*, B.C. Reg. 116/2022 ("Regulation").

[4] The Board polices compliance in various ways, including requiring asbestos abatement employers to determine whether asbestos-containing material is on a worksite before commencing work, to put in place and maintain Board-mandated protection measures while asbestos abatement work is going on, and to comply with cleanup procedures upon completion. Importantly, before commencing any asbestos abatement work, employers must give written notice to the Board.

…

[9] The Act is remedial legislation. It creates a comprehensive and complex regulatory regime governing the protection of workers in British Columbia. Part 2 of the Act addresses occupational health and safety. It authorizes the Board to establish standards for protecting worker health and safety, including making regulations relating to hazardous substances such as asbestos. The Act imposes positive obligations on workplace owners, employers, supervisors and workers who work with asbestos to comply with the Act and Regulation.

[10] The Act authorizes Officers to enter and inspect workplaces to ensure compliance, provides for evidence-gathering, and establishes what measures Officers can impose to ensure compliance. These include compliance reports, compliance orders, and administrative penalties. Officers may enter into compliance agreements with an employer in certain circumstances.

[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.

[12] The Regulation establishes comprehensive requirements for workplaces containing asbestos. Before work commences, a person qualified under the Regulation must complete a hazardous materials survey ("HMS") to identify asbestos-containing materials that constitute hazards. A qualified asbestos abatement contractor, such as the respondents, must prepare site-specific procedures based on the survey's findings, and submit them to the Board in a "Notice of Project" 48 hours before any asbestos abatement work begins.

[11] The Board may make administrative citations or penalties and seek injunctions to ensure compliance with OHS provisions, the Regulation and OHS orders (the "OHS Requirements"): *Act*, ss. 94–97.

[12] Board orders and decisions are subject to review by a review officer: *Act*, s. 268. Decisions made respecting OHS orders can be appealed to the Workers' Compensation Appeal Tribunal ("WCAT") only when an administrative penalty has been issued in respect of the OHS order under appeal: *Act*, ss. 288(1) and 288(2)(b).

[13] Where a review decision is the final administrative decision respecting an OHS order, it is subject to judicial review on a standard of reasonableness: *Ahluwalia v. British Columbia (Workers' Compensation Board)*, 2022 BCCA 165 at para. 12.

[14] Where a WCAT decision is the final administrative decision respecting an OHS order, it is subject to judicial review on a standard of patent unreasonableness: *Maung v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42.

The Chambers Judgment: 2023 BCSC 1059

[15] After reviewing the legislative framework and the Board's Administrative Decisions, the judge found that Mr. Gaday had never personally been cited for violating the *Act* or the Regulation. He went on to find that there was no evidence suggesting Mr. Gaday was unlikely to comply with the *Act* or the Regulation as he was not bound by those provisions because he was operating as a sole proprietor at the time: at paras. 14–15.

[16] With respect to D & G, the judge found that it had stopped operations following the D & G Stop Operations Order and the Board was in control as to whether D & G would ever be active again due to its inactivity and cancelled registration. The judge concluded that the court's assistance was not required: at paras. 18–20.

On Appeal

[17] The Board raises several grounds of appeal which include that the judge erred in law:

(a) by failing to apply correctly the factual test in s. 97(1) of the *Act* including by permitting an impermissible collateral attack against the Administrative Decisions of the Board; and

(b) to the extent he had a discretion to grant an injunction if the factual test were met, by incorrectly identifying the scope of discretion on a s. 97 application and in exercising that discretion based on considerations that were impermissible at law.

[18] Questions of law are reviewable on a standard of correctness. These include issues concerning the interpretation of the *Act* and the Regulation, and whether the exercise of discretion is based on inapplicable or incorrect factors. A standard of palpable and overriding error applies to findings of fact and findings of mixed fact and law where a legal principle is not readily extricable: *Housen v. Nikolaisen,* 2002 SCC 33 at paras. 8–12, 36.

Analysis

(a) Did the Judge Err by Failing to Correctly Apply the Factual Test in s. 97(1) of the *Act*?

(i) The Act

[19] Section 97 of the *Act* provides in part that:

> **Court injunction on application of Board**
>
> 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.
>
> (2) If subsection (1) (e) applies and the person referred to in that provision is a company or corporation, an injunction under that provision may be made restraining the following persons:
>
> (a) an individual who is a member of the board of directors of a company as a result of having been elected or appointed to that position;
>
> (b) a person who is a member of the board of directors or other governing body of a corporation other than a company, regardless of the title by which that person is designated;
>
> …
>
> (g) a person who is not described in any of paragraphs (a) to (f) of this subsection but who performs the functions described in any of those paragraphs, and who participates in the management of a company or corporation, …

[20] Section 27 provides:

> **Duties of directors and officers of a corporation**
>
> 27 Every director and every officer of a corporation must ensure that the corporation complies with the OHS provisions, the regulations and any applicable orders.

(ii) The Judge's Reasons

[21] The judge correctly observed:

> [5] Section 97(1)(b) is disjunctive. It requires a judge to be satisfied on a reasonable grounds standard that the person against whom the order is sought either: (a) has failed to comply; or (b) is likely to fail to comply with the Occupational Health and Safety (OHS) provisions, the regulations, or an order…

[22] He first considered the Board's claim against Mr. Gaday and summarized its position:

(a) Mr. Gaday has clearly been involved with D & G, a company that was subject to a stop operations order due to past violations.

(b) D & G stopped working in the asbestos abatement field and 117 subsequently began performing work that was previously undertaken by D & G.

(c) Mr. Gaday is the "directing mind" of both D & G and 117 and therefore should be prohibited from working in the asbestos abatement industry as a result of the Administrative Decisions.

[23] The judge concluded:

> [8] In the case before me, the petition in respect of Mr. Gaday fails for want of proof and must be dismissed.
>
> …
>
> [15] Thus, there is simply no evidence that Mr. Gaday has failed to comply with the OHS provisions or Regulations. Nor is there any evidence from which I could form reasonable grounds to believe he is likely to fail to comply. That is so because Mr. Gaday is not currently bound by those provisions. They do not apply to him as a sole proprietor who employs no workers. I categorically reject the invitation of the petitioner to make a conditional order which would bind Mr. Gaday in the event he becomes either a worker or an employer in the future.
>
> [16] I have difficulty envisaging circumstances in which it would be appropriate for a judge to make that type of prophylactic order. Such circumstances are definitely not present here.

[24] The judge then turned to the claim against D & G and concluded that while there was some evidence of past non-compliance, D & G had not been active in the asbestos abatement field since the D & G Stop Operations Order in October 2018. Thus, there were no grounds to conclude that D & G was likely to fail to comply with OHS Requirements, and the existing enforcement mechanisms were effective.

(iii) The Parties' Positions

[25] The Board submits ss. 97(1)(a) and (b), set out a specific factual test it must meet to establish there are "reasonable grounds to believe" a breach of the *Act* or

the Regulation has occurred. Once it has done so the court may grant an injunction under ss. 97(1)(c), (d), and/or (e). In this case it relies on (c) and (d).

[26] It argues the judge's conclusion that the Board did not meet the factual test was based on two errors of law: (1) permitting an impermissible collateral attack against administrative decisions of the Board; and (2) failing to apply s. 27 of the *Act.*

[27] In considering (1), the Board says the judge was required to accept the Board's findings (as set out in the Administrative Decisions) with respect to Mr. Gaday and D & G as fact, rather than 'theory'. By failing to do so, the judge permitted a collateral attack of their decisions.

[28] Mr. Gaday's position is that the judge was required to hold the Board to its burden of proving 'reasonable grounds to believe' and that doing so was not a collateral attack on its decisions and orders. He argues the judge was not required to accept the Administrative Decisions as fact, because doing so would insulate the Board from judicial scrutiny when seeking injunctive relief.

[29] In considering (2), the Board says the judge erred in concluding Mr. Gaday had not failed to comply with the *Act,* in his personal capacity, in light of s. 27. It says he erred in law in not considering and applying s. 27 to the circumstances of this case.

[30] Mr. Gaday argues that the Board failed to adduce any evidence that he was the director of D & G at the time of the OHS Orders and D & G Stop Operations Order. Rather, the evidence was to the effect that he was the director of D & G in 2020, after it ceased asbestos abatement work.

(iv) Discussion

[31] The first part of the factual "reasonable grounds to believe" test which arises from s. 97(1)(a) and (b) of the *Act* requires an understanding of what constitutes a breach under the *Act* or the Regulation. This is a question of law: *EHZ* at para. 18 referencing *Workers' Compensation Board of British Columbia v. Skylite Building*

Maintenance Ltd., 2019 BCSC 231 at para. 147 [*Skylite*]. This part of the test "is a relatively straightforward question of statutory interpretation" and, as in *EHZ*, is not at issue here: *EHZ* at para. 18.

[32] The second part of the test is a factual inquiry as to whether the respondents' conduct provides reasonable grounds to believe that a breach occurred: *EHZ* at para. 19.

[33] The "reasonable grounds to believe" standard requires an evidentiary foundation beyond a mere suspicion, but less than proof on a balance of probabilities: *Workers' Compensation Board of British Columbia v. Seattle Environmental Consulting Ltd.*, 2020 BCCA 365 at para. 58 [*Seattle 2020 Appeal*].

[34] In my view, the judge erred in concluding that the Board had failed to meet the factual test, in other words, that it had failed to establish reasonable grounds to believe Mr. Gaday had not complied with the Regulation.

[35] Respectfully, he erred in law by permitting what amounted to a collateral attack on the Administrative Decisions.

[36] The doctrine of collateral attack in respect of administrative decisions prevents a party from challenging an administrative order in the wrong forum. In determining whether an exception to the rule is appropriate, the court must consider:

> a. The wording of the statute from which the power to issue the order derived;
> b. The purpose of the legislation;
> c. The availability of an appeal;
> d. The nature of collateral attack; and
> e. The penalty on a conviction for failing to comply with an order.
>
> *R. v. Consolidated Maybrun Mines Ltd.*, [1998] 1 SCR 706 at para. 45.

[37] Mr. Gaday submits that *Consolidated Maybrun* is "inapplicable to s. 97 injunctions" and seeks to distinguish the principles outlined in that case since the

statutory injunction in question is not a prosecution or other proceeding for a breach of an order. Relying on *Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79*, 2003 SCC 63 at para. 34, he also argues that although he is not challenging the validity or legal effect of the Administrative Decisions, he is nonetheless entitled to contest the factual foundation for those decisions in support of his argument that it is no more than hearsay which was insufficient to meet the Board's "reasonable grounds to believe" standard of proof.

[38] I would not accede to these submissions.

[39] The legal principles which prevent a collateral attack are not as restrictive as Mr. Gaday suggests.

[40] Justice Fisher summarized the underlying principles of the doctrine of collateral attack in *Greengen Holdings Ltd. v. British Columbia (Ministry of Forests, Lands and Natural Resource Operations)*, 2018 BCCA 214:

> [2] The doctrine of collateral attack stems from considerations related to the administration of justice. It serves to prevent a party from circumventing the effect of a decision and attacking it in the wrong forum. It does not go so far as to prevent a party from pursuing a valid civil action against a government body provided the essential character of the claim is not a claim for judicial review. These principles stem from cases such as *Garland v. Consumers' Gas Co*., 2004 SCC 25, *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52, and most significantly here, *Canada (Attorney General) v. TeleZone Inc*., 2010 SCC 62.

[41] Collateral attack is one facet of the broader doctrine of abuse of process that concerns the proper administration of justice and the power of courts to prevent misuse of their procedures: *Greengen* at paras. 30–31.

[42] To determine whether a claim amounts to a collateral attack, the court should inquire into whether the claim or any aspect of the claim is in essence an appeal of the order: *Krist v. British Columbia*, 2017 BCCA 78 at para. 47.

[43] With respect to the distinction between challenging the validity of an order and the factual findings upon which that order is based on, in *Roeder v. Lang*

Michener Lawrence & Shaw, 2007 BCCA 152, Justice Newbury highlighted the approach taken by Arbour J. in *Toronto (City)*:

> [16] … Speaking for the majority, Arbour J. suggested that the doctrine of collateral attack was not applicable, or at least not an appropriate approach, to the issue before the Court. At para. 33 of her reasons, she noted *R. v. Wilson*, *supra*, where at 599 McIntyre J. had formulated the rule against collateral attack as follows:
>
> > It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally – and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment. [Emphasis added.]
>
> In Arbour J.'s analysis, *Wilson* and other cases invoking the rule had "involve[d] attempts to overturn decisions in other fora, and not simply to relitigate their facts." (My emphasis.) She also noted at paragraph 33 the Court's more recent decision in *R. v. Consolidated Maybrun Mines Ltd.* [1998] 1 S.C.R. 706, in which:
>
> > ... this Court held that a mine owner who had chosen to ignore an administrative appeals process for a pollution fine was barred from contesting the validity of that fine in court because the legislation directed appeals to an appellate administrative body, not to the courts. Binnie J. described the rule against collateral attack in [*Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460, 2001 SCC 44], at para. 20, as follows: "that a judicial order pronounced by a court of competent jurisdiction should not be brought into question in subsequent proceedings except those provided by law for the express purpose of attacking it."
>
> [17] Applying these formulations to the facts in *Toronto v. C.U.P.E.*, Arbour J. emphasized that the union was not seeking to overturn the sexual abuse conviction itself, but simply to contest "... for the purposes of a different claim with different legal consequences, whether the conviction was correct. It is an implicit attack on the correctness of the factual basis of the decision, not a contest about whether that decision has legal force, as clearly it does." (At para 34.) She did not advert to the fact that the arbitrator had made a factual finding obviously contrary to that made, on a higher standard of proof, by the criminal court and did not state expressly that the principle of collateral attack was not applicable. Rather, she stated, "in light of the focus of the collateral attack rule on attacking the order itself and its legal effect … the better approach here is to go directly to the doctrine of abuse of process."
>
> [Emphasis in original.]

[44] There is also a material difference, in my view, between the Administrative Decisions themselves and the evidence or findings of fact upon which they are based. Since their validity is not challenged by Mr. Gaday, the Administrative Decisions are evidence of their factual underpinnings that:

a) D & G committed at least 45 potential high-risk violations, was subject to at least five administrative penalties, and was subject to at least five stop work orders related to improper asbestos abatement and identification;

b) Mr. Gaday was the principal worker for both D & G and 117;

c) D & G and 117 are affiliated companies;

d) D & G and 117 are effectively the same firm and Mr. Gaday was the directing mind of both companies;

e) At least part of D & G's business was transferred to 117 in an attempt to "leave behind" the history of violations and debt of D & G; and

f) 117 was primarily operated by Mr. Gaday.

[45] Each of the Administrative Decisions was subject to the Board's internal review and appeal process and, ultimately, to judicial review. Mr. Gaday unsuccessfully sought a review of the D & G Stop Operations Order but took no other steps to challenge the Administrative Decisions in the proper forum, that is through the internal appeal mechanism, and then judicial review in the Supreme Court of British Columbia.

[46] I agree with the Board that the reasoning in *EHZ* on this issue applies here, that is:

> [33] … I conclude that the respondents may not collaterally challenge the validity of the Orders in a s. 97 application. The avenue for such challenges is the internal appeals process and a court on judicial review. The respondents may also attack the validity of any order relied on by the Board in a contempt proceeding, should that occur.

[47] While Mr. Gaday submits he is not challenging the validity of the Administrative Decisions, attacking the factual foundation of the decisions appears to me, essentially, to be a judicial review in disguise amounting to an impermissible collateral attack. In any event, this argument can be disposed of under the doctrine of abuse of process as was the case in *Toronto (City)*.

[48] The Board also submits the judge erred in not finding that Mr. Gaday had breached the OHS Requirements as a matter of law. It argues that the Administrative Decisions directly connect Mr. Gaday — as the directing mind of both D & G and 117 — with serious violations of OHS Requirements. As such, he was necessarily involved in their violations.

[49] Relying on *Workers' Compensation Board v. Barring,* 2020 BCSC 1174, it argues that it is not significant that OHS Orders were issued against the companies as opposed to against the directing mind of those companies. Where several companies with the same directing mind are involved in violations of safety regulations, it submits that it is appropriate that an injunction be issued against that individual as opposed to the corporate entities that were subject to the OHS Orders.

[50] Mr. Gaday argues there was no evidence that he was a director of D & G at the time any of the Administrative Decisions were made. While he was a director of D & G as of July 10, 2020, he says there was no evidence of that directorship overlapping with any alleged violation committed by D & G, all of which occurred years earlier. There was also no evidence that he was ever a director of 117. As a result, he says there was no evidence that he could even access any of the internal review mechanisms of the *Act* to challenge any of the Administrative Decisions.

[51] In concluding there was no evidence that Mr. Gaday had failed to comply with the OHS provisions or the Regulation the judge stated:

> [13] Mr. Gaday, in his affidavit made on November 24, 2020, says that he is a director of D&G and that he formerly provided asbestos abatement services through D&G. He says he was a worker of 117.
>
> [14] As of November 2020, Mr. Gaday was working as a sole proprietor with no employees. He is not registered with WorkSafe as either an employer

> or a worker. That being so, Mr. Gaday is not subject to Part 2 of the *Act*, which only applies to workers and employers. Importantly, Mr. Gaday deposes that he has never been personally cited for violating the *Act* or the OHS Regulation. The petitioner presented no evidence of any violations by Mr. Gaday or any orders made against him personally.

[52] Although the judge did not specifically refer to s. 27 of the *Act (*quoted at para. 20 above) in his reasons, this portion of his analysis appears to address arguments that relate to this issue.

[53] In my view, the judge committed a reviewable error in finding that Mr. Gaday was not subject to Part 2 of the *Act* and that the Board had not satisfied the factual test that he had failed to comply with the OHS Requirements. Section 27 of the *Act* applied to Mr. Gaday.

[54] The evidence went further than establishing that Mr. Gaday was only a director of D & G in 2020. The affidavit of the Board's Compliance Officer, Mark Mathews, contained a BC Company summary for D & G, current to February 28, 2020, which listed Mr. Gaday as a director and officer as at February 18, 2018, which was the date of the last annual report filed.

[55] During submissions Mr. Gaday's counsel accepted that a reasonable inference to draw from this report was that Mr. Gaday had been an officer or Director of D & G at least during part of the period that the OHS Orders were issued.

[56] There were also the Administrative Decisions which linked Mr. Gaday personally to the operations of D & G during the time frames when the OHS Requirements were breached.

[57] I would add that s. 23 of the *Act* provides in part:

> 23(1) Every supervisor must
>
> > (a) ensure the health and safety of all workers under the direct supervision of the supervisor,
> >
> > (b) be knowledgeable about the OHS provisions and those regulations applicable to the work being supervised, and

> (c) comply with the OHS provisions, the regulations and any applicable orders.
>
> (2) Without limiting subsection (1), a supervisor must
>
> (a) ensure that the workers under the supervisor's direct supervision
>
> (i) are made aware of all known or reasonably foreseeable health or safety hazards in the area where they work, and
>
> (ii) comply with the OHS provisions, the regulations and any applicable orders.

[58] Mr. Gaday also submits that s. 97(2) operates independently from s. 97(1) in the sense that if the "person" is a company or a corporation, then the Board has a separate obligation to establish reasonable grounds against Mr. Gaday personally under s. 97(1)(a) or (b) before it can avail itself of the injunction remedy under s. 97(1)(d).

[59] The modern approach to statutory interpretation is well known, namely that statutory provisions must "be read in their entire context and, in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, the object of the *Act*, and the intention of Parliament": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26.

[60] When considered in this context, I disagree with Mr. Gaday's submission on this point. I accept the Board's argument that s. 97(1) sets out the framework that has to be adhered to. Once the Board has satisfied its onus under (a) or (b) then it may seek an injunction against that "person" under s. 97(1)(c), (d) or (e). Section 97(2) provides an alternative mechanism in which it can proceed against the individuals named in that section in seeking an injunction under s. 97(1)(e) when that person is a company or a corporation. In such cases, it is not obliged to repeat the process it followed to satisfy the court that subsection 97(1)(a) or (b) applies to that individual. The application of s. 97(2) to s. 97(1)(e) does not, in my view, limit the application of s. 97(1)(d) to Mr. Gaday in the way he suggests. In particular, the use of the word "person" in s. 97 is not limited to a worker or employer as defined in the *Act*.

[61] For these reasons I would conclude that the judge committed a reviewable error in finding there was no evidence that Mr. Gaday (a) has contravened the OHS Requirements, or (b) has failed to comply with the OHS Requirements. There was sufficient evidence in the record which included the Administrative Decisions to find that the Board had met its evidentiary burden regarding the factual test.

[62] In so far as D & G is concerned, the judge appears to have accepted that the Board had met the factual test in relation to past conduct. That conclusion is amply supported by the record. He denied the Board's request for an injunction on the basis of a failure to establish reasonable grounds with respect to breaches of the OHS Requirements post-October 2018 when the D & G Stop Operations Order was made.

[63] Since I would conclude that past breaches were established by the Board with respect to both Mr. Gaday and D & G, this raises the question as to whether the judge erred in the exercise of his discretion, to which I shall now turn.

(b) Did the Judge Err in the Exercise of Discretion to Refuse to Grant the Injunctions?

[64] The issue is whether, to the extent the judge had a discretion to grant an injunction if the factual test were met, did he err by incorrectly identifying the scope of discretion on a s. 97 application and in exercising that discretion based on considerations that were impermissible at law?

[65] Granting injunctive relief is an exercise of discretion that is entitled to deference on appeal and will only be interfered with when there is an error of law, improper weight has been given to relevant considerations, or a decision is unjust: *Seattle 2020 Appeal* at para. 69.

[66] The injunctions sought by the Board against Mr. Gaday and D & G in its petition required compliance with the *Act* and the Regulation pursuant to s. 97(1)(d) of the *Act*.

[67] In the amended petition, the Board changed the terms of the injunction sought such that compliance was required with:

a) Part 2, Divisions 1, 3, 4, 7, 10, 11, 12 and 15 of the *Act*; and

b) Parts 2, 3, 4, 5, 6, 8 and 20 of the Regulation.

[68] The judge considered the discretion involved under s. 97(1)(d) of the *Act* stating:

> [6] If the court is satisfied, an injunction may—not must—be granted. The court must exercise its judicial discretion in deciding whether to grant the order. In my view, such orders should not be made unless there is a good reason to do so. The court should be satisfied that the order is necessary. In most cases, necessity will be shown on a finding that the panoply of enforcement provisions available to the Board within the statutory scheme are proving to be ineffective in ensuring compliance with the regulatory regime.
>
> [7] I am also mindful of the comments of the Court of Appeal in *W.C.B. v. Seattle Environmental Consulting Ltd*., 2020 BCCA 365, at para. 13. There, in part, Justice Fenlon for the Division said this:
>
> > . . . Before leaving this topic, however, I would observe that orders restraining persons from noncompliance with an entire body of governing legislation in a regulated industry should be made sparingly because they expose those bound by them to common-law contempt in addition to the specific regulatory offences provided for in the legislation for the same conduct: *Vancouver Coastal Health Authority v. Adamson*, 2020 BCCA 145 at paras. 35–36.

[69] The wording of s. 97(1) is clear. Once the Board has met the factual test, a court may grant an injunction under (c), (d) or (e).

[70] The Board argues that a s. 97 injunction, like all statutory injunctions, engages the public interest for the reasons identified in the *Act* such that the judge retains limited discretion to deny the injunction once the factual test is met absent exceptional circumstances.

[71] Mr. Gaday argues that the discretion is not as limited as the Board suggests, particularly when there is no evidence of a continuing breach.

[72] There is generally a low threshold for obtaining a statutory injunction, and where a breach of an enactment is demonstrated it should only be refused in exceptional circumstances: *Maddock v. Law Society of British Columbia*, 2023 BCCA 53 at para. 65; *Vancouver (City) v. Maurice*, 2005 BCCA 37 at paras. 34 and 57.

[73] It follows that when there are reasonable grounds to believe that a person has breached the *Act* or the Regulation, a court should grant a s. 97 injunction unless exceptional circumstances are present: *EHZ* at para. 23.

[74] This Court in the *Seattle 2020 Appeal* cautioned against issuing orders restraining individuals from non-compliance with an entire body of governing legislation:

> [13] Accordingly, these two grounds of appeal are entirely devoid of merit and should not have been pursued. Before leaving this topic, however, I would observe that orders restraining persons from noncompliance with an entire body of governing legislation in a regulated industry should be made sparingly because they expose those bound by them to common-law contempt in addition to the specific regulatory offences provided for in the legislation for the same conduct: *Vancouver Coastal Health Authority v. Adamson,* 2020 BCCA 145 at paras. 35–36.

[75] In *Vancouver Coastal Health Authority v. Adamson*, 2020 BCCA 145, the Vancouver Coastal Health Authority was seeking an equitable injunction enjoining an individual from operating a daycare without a licence under the *Community Care and Assisted Living Act*, S.B.C. 2002, c. 75. This Court held that when there is "a clear method of enforcement set out in the statute, the court should not grant injunctive relief unless the statutory provision is shown to be inadequate in some respect": at para. 35. It is important to note that, unlike the *Act* at issue on this appeal, the *Community Care and Assisted Living Act* does not contain any provision which provides for injunctive relief. In my view, it is in the latter context in which a court should exercise its discretion to grant a broad injunction cautiously and can be distinguished from statutory injunctions where part of the method of enforcement set out in the statute is the injunction itself.

[76] I would add that this Court in the *Seattle 2020 Appeal* did not refer to *Vancouver (City)* or other authority which was decided in the specific context of a statutory injunction. The comment that these types of broad orders should be "made sparingly" was *obiter* as the Court had already decided the aspect of the appeal challenging the validity of the injunction was "entirely devoid of merit and should not have been pursued".

[77] In addition to injunctions granted under s. 85 of the *Legal Professions Act* as described above at para. 72, the jurisprudence surrounding statutory injunctions includes the statutory interpretation of s. 274 of the *Community Charter*, S.B.C. 2003, c. 26 and ss. 281–282 of the *Municipal Act*, R.S.B.C. 1996, c. 232, which is to the effect that a court's discretion to refuse an injunction is limited once a municipal bylaw has been breached: *Skylite* at para. 154.

[78] In *Skylite,* Justice Marzari found that an injunction which is sought pursuant to s. 97 of the Act (s. 198 at that time), while different in some respects from those described in the municipal bylaw authorities to which I have referred, also engages the public interest. She went on to find that there is little discretion to deny the Board an injunction if the factual test has been satisfied: at para. 156. In my view she was correct in reaching that conclusion.

[79] The remaining question is whether the injunctive relief sought against D & G and Mr. Gaday should be granted.

[80] The Board has satisfied the factual test against D & G and I see no exceptional circumstances that should prevent the injunction from being granted against it. D & G has engaged in a significantly serious course of conduct over the years and has outstanding fines and administrative penalties. This distinguishes this case from *British Columbia (Workers' Compensation Board) v. Ace Environmental Services Ltd.*, 2019 BCSC 849 where the s. 97 (s. 198 at that time) injunction was not granted despite the factual test being met as the administrative sanctions had had their desired effect and all fines levied had been paid. That is not the case with

D & G and I am satisfied that the injunction should be granted in the terms sought by the Board against it with the modification to which I refer below.

[81] With respect to Mr. Gaday, although he is not currently within the scope of the *Act*, he has nonetheless been found liable for repeated breaches by way of D & G and 117. The injunction sought against Mr. Gaday is broad in its scope.

[82] In *British Columbia (Workers' Compensation Board) v. Seattle Environmental Consulting Ltd.*, 2017 BCCA 19 [*Seattle 2017 Appeal*], this Court confirmed the availability of broad orders sought by the Board under s. 97 (s. 198 at that time) of the *Act*:

> [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.

[83] The scope of the injunction sought in the *Seattle 2017 Appeal* was broader than the one sought by the Board here, since it restrained the parties from breaching the entirety of the *Act* and the Regulation.

[84] Since I would find the factual test has been met by the Board regarding Mr. Gaday, the remaining issue is whether this is one of those exceptional cases where the statutory injunction should not be granted. In my view, it is not. Although Mr. Gaday has now been beyond the purview of the *Act* since October 2020 when he registered his business as a sole proprietorship under s. 88(2) of the *Partnership Act*, R.S.B.C. 1996, c. 348, his past conduct is a matter of record. If he is in fact operating as a sole proprietor in the business of asbestos removal such that there are no other persons involved whose safety the objectives of the *Act* and the Regulation seek to address, then he is not prejudiced by the granting of the injunction.

[85] Part 2 of the *Act* describes the regulated functions in s. 29:

> Person may be subject to obligations in relation to more than one role
>
> 29 (1) In this section, "function" means the function of employer, supplier, supervisor, owner, prime contractor or worker.
>
> (2) If a person has 2 or more functions under the OHS provisions in respect of one workplace, the person must meet the obligations of each function.

[86] I would modify the injunction sought by the Board against both D & G and Mr. Gaday to reflect the regulated functions referred to in s. 29.

Disposition

[87] I would allow both appeals and grant the injunction in the following terms:

> The respondents when engaged in functions referred to in Part 2 – Occupational Health and Safety of the Workers Compensation Act are required to comply with Divisions 1, 3, 4, 7, 10, 11, 12, and 15 of Part 2 and Parts 2, 3, 4, 5, 6, 8 and 20 of the *Occupational Health and Safety Regulation*.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Mr. Justice Willcock"